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HUMAN RIGHTS QUESTIONS: IMPLEMENTATION
OF HUMAN RIGHTS INSTRUMENTS

Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the seventh meeting of persons chairing the human rights treaty bodies, convened pursuant to General Assembly resolution 50/170 of 22 December 1995.

96-27333 (E) 301096

ANNEX

Report of the seventh meeting of persons chairing the human rights treaty bodies

I. INTRODUCTION

1.6 Since the adoption of resolution 37/44 on 3 December 1982, the General Assembly has continuously kept under review the problems relating to the effective implementation of international instruments on human rights, inclu reporting obligations under international instruments on human rights. Thos problems have also received careful attention during the various sessions of treaty bodies, at some of the meetings of States parties and at meetings of other organs such as the Economic and Social Council and the Commission on Hu Rights.

2. Pursuant to General Assembly resolution 38/117 of 16 December 1983, the Secretary-General convened the first meeting of the persons chairing the bod entrusted with the consideration of State party reports in August 1984. The report of that meeting was presented to the General Assembly at its thirty-n session (A/39/484, annex). The second, third, fourth, fifth and sixth meeti were convened by the Secretary-General in October 1988, October 1990, October 1992, September 1994 and September 1995. The reports of those meeti were presented to the Assembly at its forty-fourth, forty-fifth, forty-seven forty-ninth and fiftieth sessions (in the annexes of documents A/44/98, A/45/636, A/47/628, A/49/537 and A/50/505 respectively). It may be recalled that, in accordance with General Assembly resolution 49/178 of 23 December 1 the meetings of persons chairing the human rights treaty bodies have become annual since 1995.

3. In its resolution 50/170 of 22 December 1995, the General Assembly welc the report of the persons chairing the human rights treaty bodies on their s meeting, held at Geneva from 18 to 22 September 1995, and took note of the conclusions and recommendations in the report (A/50/505, annex); welcomed th continuing efforts by the treaty bodies and the Secretary-General aimed at streamlining, rationalizing and otherwise improving reporting procedures, an urged the treaty bodies and the meetings of persons chairing the human right treaty bodies to continue to examine ways of reducing the duplication of reporting required under the different instruments, without impairing the quality of reporting, and of generally reducing the reporting burden on Memb States. The Commission on Human Rights welcomed the report of the sixth mee of the persons chairing the human rights treaty bodies and took note of its conclusions and recommendations in its resolution 1996/22 of 19 April 1996.

4. The seventh meeting of persons chairing the human rights treaty bodies convened by the Secretary-General pursuant to General Assembly resolution 50/170.

II. ORGANIZATION OF THE MEETING

5. The meeting was held at the United Nations Office at Geneva from 16 to 20 September 1996. The following representatives of the human rights treaty bodies attended: Mr. Francisco José Aguilar Urbina (Chairperson, Human Rights Committee), Mr. Philip Alston (Chairperson, Committee on Economic, Social and Cultural Rights), Mr. Michael Banton (Chairperson, Committee on the Elimination of Racial Discrimination), Ms. Akila Belembaogo (Chairperson, Committee on the Rights of the Child), Ms. Ivanka Corti (Chairperson, Committee on the Elimination of Discrimination against Women) and Mr. Alexis Dipanda-Mouelle (Chairperson, Committee against Torture).

6. Representatives of the following United Nations bodies and specialized agencies attended the meeting: Division for the Advancement of Women of the United Nations Secretariat, the Joint United Nations Programme on HIV/AIDs (UNAIDS), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO). A member of the Subcommission on Prevention of Discrimination and Protection of Minorities attended the meeting. The following regional intergovernmental organizations were represented at the meeting: Council of Europe (represented by the President of the European Commission on Human Rights), and the Organization for Security and Cooperation in Europe (OSCE). In addition, representatives of the following non-governmental organizations attended: Amnesty International, Anti-Racism Information Service (ARIS), Baha'i International Community, the Catholic Association for Radio and Television, the Conference of European Justice and Peace Commissions, International Service for Human Rights, International Women's Rights Action Watch, the Women's International League for Peace and Freedom, the NGO Group for the Convention on the Rights of the Child and the World Organization against Torture.

7. In addition to his address to open the meeting (see para. 13 below), Mr. José Ayala-Lasso, the United Nations High Commissioner for Human Rights, participated in a closed meeting with the chairpersons, who appreciated the opportunity to have a frank dialogue with him. The chairpersons appreciated also that the High Commissioner had implemented the project of providing office space and facilities for experts and special rapporteurs.

8. Mr. Bacre W. N'diaye, chairperson of the third meeting of special rapporteurs, representatives, experts, and chairpersons of working groups of the special procedures of the Commission on Human Rights and the Advisory Services Programme addressed the chairpersons of the human rights treaty bodies on 19 September 1996.

9. The agenda for the meeting was as follows:

1. Opening of the meeting.

2. Election of the officers of the meeting.

3. Adoption of the agenda.

4. Organizational and other matters.

5. Review of recent developments relating to the work of the treaty bodies.

6. Improving the operation of the human rights treaty bodies.

7. Cooperation of human rights treaty bodies with United Nations non-conventional human rights bodies and mechanisms and regional organizations.

8. Gender perspectives in the work of the treaty bodies.

9. Prevention of human rights violations, including early warning and urgent procedures.

10. Assistance to States in implementing treaty body recommendations.

11. Adoption of the report to the General Assembly.

10. Owing to lack of time, the chairpersons decided to postpone item 9 until the next meeting.

11. The following documentation was made available to the participants:

(a) Provisional agenda and annotations (HRI/MC/1996/1);

(b) Report of the Secretary-General on improving the operation of the human rights treaty bodies (HRI/MC/1996/2);

(c) Report of the Secretary-General on the status of the international instruments and the general situation of overdue reports (HRI/MC/1996/3);

(d) Reports of the fifth and sixth meetings of persons chairing the human rights treaty bodies (A/49/537, annex, and A/50/505, annex);

(e) Report of the Fourth World Conference on Women (A/CONF.177/L.20);

(f) Interim report on the updated study by the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty regime (A/CONF.157/PC/62/Add.11/Rev.1);

(g) Vienna statement of the international human rights treaty bodies (A/CONF.157/TBB/4 and Add.1);

(h) Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III);

(i) Compilation of general comments and general recommendations adopted by human rights treaty bodies(HRI/GEN/1/Rev.2);

(j) Preparation of a plan of action for a United Nations decade for human rights education: report of the Secretary-General (A/49/261 and Add.1);

(k) Reports of the United Nations High Commissioner for Human Rights on the Implementation of the Plan of Action for the United Nations Decade for Human Rights Education: 1995-2004 (A/50/698 and E/CN.4/1996/51);

(l) General Assembly resolutions 50/170 and 50/177;

(m) Commission on Human Rights resolutions 1996/16, 1996/22, 1996/44, 1996/48 and 1996/78;

(n) Report of the Secretary-General on the Restructuring the Centre for Human Rights: Programme Budget for the Biennium 1996-1997 (A/C.5/50/71);

(o) Proposed medium-term plan for the period 1998-2001: Programme 19: Human rights (A/51/6 (Prog. 19)).

12. The following informal working documents were also made available to the participants:

(a) Recommendations for advisory services and technical assistance by treaty bodies: compilation prepared by the Secretariat;

(b) Actions being taken regarding recommendations made by treaty bodies for advisory services and technical assistance in the field of human rights: compilation prepared by the Secretariat;

(c) Status of the international human rights instruments: compilation prepared by the Secretariat;

(d) Status of State party reports to be submitted to the principal international human rights instruments: compilation prepared by the Secretariat;

(e) Plan of Action to strengthen the implementation of the Convention on the Rights of the Child, Centre for Human Rights;

(f) Document relating to the round table organized by UNFPA, Centre for Human Rights and the Division for the Advancement of Women on "Round Table on Approaches of Human Rights Treaty Bodies Towards Women's Health, with a Focus on Reproductive and Sexual Health Rights".

13. The meeting was opened by Mr. José Ayala-Lasso, the United Nations High Commissioner for Human Rights, who addressed the chairpersons.

14. Ms. Ivanka Corti was elected Chairperson-Rapporteur of the meeting unanimously. The chairpersons agreed that the principle of rotation among the treaty bodies should be taken into consideration in future meetings.

15. On 20 September 1996, the chairpersons considered the draft report of their seventh meeting. The report, as amended during the course of the meeting, was adopted unanimously by the chairpersons.

III. REVIEW OF DEVELOPMENTS RELATING TO THE WORK OF THE TREATY BODIES

16. Under this agenda item, the chairpersons provided information on recent activities of the treaty bodies they represented.

17. The chairperson of the Human Rights Committee referred to the increased active participation by specialized agencies and non-governmental organizations in the monitoring procedures under the International Covenant on Civil and Political Rights. He referred to the process to review the Committee's rules of procedures and its working methods. He also stated that the Committee had decided to prepare a series of new general comments and had appointed Committee members to prepare drafts. He pointed out that one of those general comments would concern article 3 of the Covenant regarding discrimination against women.

18. The chairperson of the Committee on Economic, Social and Cultural Rights stressed that the very existence of his Committee was legally tenuous because it had not been explicitly established by the Covenant of Economic, Social and Cultural Rights. Therefore, its legal existence could be called into question by the Economic and Social Council. Consideration should be given in the future to steps to be taken to remedy this situation.

19. The chairperson also regretted that his Committee had not been able to establish a constructive relationship with the World Bank and the United Nations Development Programme (UNDP), despite numerous requests. He noted the positive experience that the Committee on the Rights of the Child had had with UNICEF in terms of close cooperation, a relationship which had served not only to help promote knowledge of the Convention and its effective implementation, but which had also resulted in substantial additional financial and other resources being made available to that Committee. However, he questioned the wisdom of having one treaty body that was extremely well funded, while other treaty bodies had inadequate resources and administrative support with possibly no natural outside agencies to provide additional funding that could lead to increased effectiveness and more optimal functioning.

20. The chairperson of the Committee on the Rights of the Child indicated that the Committee had visited Bangladesh, Nepal, India, Sri Lanka and Pakistan, in cooperation with UNICEF, and subsequently participated in a seminar on the elimination of child labour.

21. The Committee had been asked to participate in a significant number of regional and international meetings. Most prominent among these had been the World Congress against Commercial Sexual Exploitation of Children in Stockholm. The chairperson pointed out that all these visits made the Convention and the work of the Committee better known but the virtual universal ratification of the Convention on the Rights of the Child, even if a positive achievement, posed the problem of the burden of work to the Committee in the present conditions.

22. The chairperson of the Committee against Torture commented that the major problems facing his Committee included ensuring that States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment respect reporting deadlines and reservations by States to conducting investigations. He also stressed that the Committee continued to work closely with international and regional mechanisms established to fight against torture.

23. The chairperson of the Committee on the Elimination of Racial Discrimination referred to his Committee proposal of a new procedure for examining State parties initial reports when they are seriously overdue. He pointed out that the Committee's latest annual report to the General Assembly contains a new and detailed chapter on its methods of work, which explains how the Committee proceeds on a wide range of issues. The Committee had also decided to eliminate a summary of the discussions of initial and periodic reports in its annual report.

24. The chairperson of the Committee on the Elimination of Discrimination against Women referred to a seminar organized by a non-governmental organization on how to improve the content and quality of concluding observations. She drew particular attention to the development of the proposed optional protocol describing the progress made by the in-session Working Group of the Commission on the Status of Women at its fortieth session. She informed the meeting that the working group had accepted the participation of an expert from the Committee on the Elimination of Discrimination against Women as a resource person. The Committee had also decided to explore on the basis of experience of other treaty bodies how to regularly receive information from non-governmental organizations and to what extent their representatives could participate in its monitoring procedures. The Committee had also decided to adopt a new form of annual report to the General Assembly which would focus on its concluding observations. The Committee had appointed some members as focal points to follow the work of the other treaty bodies.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Improving the operation of the human rights treaty bodies

Promotion of international human rights treaties

25. The chairpersons recommend that any new human rights treaties should contain a provision that facilitates subsequent procedural amendments without going through the full constitutional ratification process in the State parties. It was suggested, for example, that any new human rights treaties should be drafted to provide that if two thirds of the States parties to such a treaty find that a decision to amend is procedural, then they can amend it in a meeting of States parties without referring it to their constitutional procedures for ratification.

26. The chairpersons further recommend that consideration be given to more creative approaches whereby several of the various procedural amendments to the human rights treaties could be packaged together in a single, comprehensive document to be transmitted to the States parties to allow them the option of

invoking their constitutional amendment procedures only once for all the amendments.

27. The chairpersons also recommend that the view of the treaty body concerne should be taken into account when the General Assembly considers proposals for optional protocols to human rights treaties.

States parties

28. The chairpersons note that a number of problems continue to exist between States parties and the treaty bodies, including the failure of some States to fulfil their reporting and financial obligations, and the increasing reporting burden upon States deriving from treaty bodies' requests for information. The chairpersons reiterate the recommendation of their fifth meeting (A/49/537, para. 17) that such problems be considered at regular meetings of States parties. These problems will demand extended attention when the independent expert has reported on possible long-term approaches to enhancing the effectiv operations of the treaty system.

Treaty-monitoring process

29. The chairpersons recommend that members of treaty bodies refrain from participating in any aspect of the consideration of the reports of the States which they are nationals, or communications or inquiries concerning those States, in order to maintain the highest standards of impartiality, both in substance and in appearance.

Human rights education

30. The chairpersons recommend that members of the various treaty bodies undertake substantial efforts in relation to all States parties, as well as their own national parliaments and human rights institutions, to publicize the six principal international instruments.

31. They further recommend that UNDP be invited to present at the next meetin of persons chairing the human rights treaty bodies a plan of action on how the principal human rights treaties and various reporting procedures could be promoted through its programmes. Similarly, when invited to the next meeting persons chairing human rights treaty bodies, ILO, UNHCR, UNESCO, WHO, UNICEF should also be asked to indicate what contribution they could make to the dissemination of knowledge about the principal human rights treaties and the various reporting procedures. Also, the Inter-Parliamentary Union (IPU) shoul be asked to attend the next meeting for the same purpose. The United Nations information centres should be asked to prepare a report regarding what they ha done to disseminate information about the various international human rights treaties and the work of the treaty bodies.

32. The chairpersons also recommend that national human rights institutions a non-governmental organizations take a more active role at the national level i monitoring and reporting upon the various steps States parties have taken or a in the process of taking to promote knowledge of the six principal human right treaties, their translation into appropriate languages, as well as the

dissemination to the public of States parties reports to the various treaty bodies and the concluding observations of the treaty bodies relating to such reports. International or regional non-governmental organizations that work in cooperation with national organizations, as well as national non-governmental organizations themselves, are encouraged to present such information to the next meeting of the chairpersons.

External relations of treaty bodies

33. The chairpersons recommend that the person elected to chair the meeting of chairpersons continue to represent all of the persons chairing human rights treaty bodies in between the annual meetings in order to follow-up on the implementation of the chairpersons' recommendations and have the opportunity to attend meetings that could affect the treaty bodies as a whole.

34. The chairpersons express the wish that the Economic and Social Council amend the rules of the Commission on Human Rights so that the treaty bodies are recognized as having a distinct status that would enable them to participate in all relevant meetings. They further request that the General Assembly indicate in a resolution that the treaty bodies should, as a matter of principle, be permitted to participate in international meetings of interest to them. The Secretariat should take the necessary steps to establish a special fund within available resources to facilitate travel by one or more treaty body members to United Nations meetings and conferences that are considered to be of direct importance to the work of the treaty body concerned. The chairpersons are of the view that the inability of the treaty bodies to participate in international meetings of vital importance constitutes a setback for the improvement of the knowledge of the work of the various treaty bodies and even the awareness of their importance.

35. The chairpersons affirm once again that non-governmental organizations play a vital role in supplying the treaty bodies with documentation and other information on human rights developments that is extremely useful for their monitoring activities and that each treaty body should consider how best to monitor and facilitate this role. The chairpersons agree that at their next meeting a specific opportunity would be provided to non-governmental organization representatives to present their views. This would not prejudice in any way their participation at appropriate points during the meeting as a whole.

36. The chairpersons encourage non-governmental organizations to continue to take an active role in critically examining the work of the treaty bodies. Their constructive criticism should stimulate more effective performance by the treaty bodies as a whole as well as the performance of their individual members.

37. The chairperson notes that there have been very extensive delays in efforts by the Centre for Human Rights to develop electronic information systems that were recommended by the Commission on Human Rights as long ago as 1989. They note that in the meantime there have been many major developments in human rights databases, especially on the World Wide Web, and that materials of direct relevance to the work of the treaty bodies are now available on databases such as those of the UNHCR, UNICEF, ILO and the University of Minnesota

(http://www.unicc.org/unhcrcdr/; gopher://hqfaus01.unicef.org:70/1; http://www.unicc.org/ilo/index.html; http://www.umn.edu/humanrts/; http://heiww.unige.ch/humanrts/). They urge those involved in the development of these databases to seek to include treaty body materials as fully as possible on their sites and recommend that the Centre for Human Rights make a particular effort to cooperate in every possible way with the complementary development of such databases.

38. The chairpersons express the view that non-governmental organizations should be invited by the chairperson of a treaty body to attend the press conference usually held at the end of each session without their participating in the dialogue between the journalists and the members of the treaty bodies. Individual treaty bodies may also wish to consider a separate non-governmental organization briefing at the end of their sessions in addition to the traditional press conference.

39. The chairpersons request each treaty body to make available to the public the addresses of their members so that communication, in particular between non-governmental organizations and treaty body members, can be facilitated. The request of treaty body members who object to their coordinates being made available to the public should be respected.

Secretariat support

40. The chairpersons note with concern that the plans to restructure the Centre for Human Rights, which will have a major impact on existing long-standing arrangements in relation to the servicing of the five Geneva-based treaty bodies, have proceeded on the basis of no meaningful consultation with the chairpersons or with the treaty bodies. They note that, less than two weeks before very major changes are to be announced and implemented, they have not yet received any information that would enable them to understand how the new arrangements will look or how they will operate. In view of the need to ensure that an effective working partnership is developed between the treaty bodies and the Secretariat, the chairpersons call upon the United Nations High Commissioner for Human Rights to ensure that this lack of consultation and transparency be remedied in the following ways: (a) each chairperson should be notified of the details of the reorganization of the relevant part of the Centre for Human Rights as soon as they are announced; (b) each Committee should be briefed in detail as to the arrangements; and (c) genuine consultations should take place between representatives of the treaty bodies and the Secretariat to ensure the optimal use of available resources.

41. The chairpersons also consider it to be essential that the staff members servicing the treaty bodies be encouraged to discuss among themselves and with the treaty bodies the best ways in which to organize the work in which they are mutually engaged. This spirit of partnership and interaction has been notably absent in the past, despite the considerable contribution that it can make to improved working relations and more effective servicing.

42. On the basis of the extremely vague details provided thus far by the Secretariat in relation to the proposed restructuring of the Centre for Human Rights on the servicing to be provided to the treaty bodies, the chairpersons

express their deep concern that the apparent elimination of individuals designated as Committee secretaries will be extremely inefficient, counter-productive and ultimately unworkable.

43. The annual meeting of chairpersons has the potential to perform very important functions in terms of ensuring a more effective as well as a more efficient functioning of the treaty supervisory system. If this potential is to be fully realized it is essential that a consistent flow of information be made available to the chairpersons so that they are in a position to discuss the relevant issues in an informed and focused manner. The chairpersons note, by way of example, that the key issue of a radical reduction of the resources concerning the documentation of the treaty bodies has not always been dealt with in a satisfactory manner. If the chairpersons are to be in a position to discuss in a meaningful way an issue that has the potential to undermine the very foundation upon which the existing system of reports and supervision is based, it is essential that they be briefed in detail and provided with all of the relevant background documentation.

44. In order to ensure the availability of comprehensive documents submitted by some States parties to the treaty bodies, the chairpersons request the Secretary-General to exempt the treaty bodies from the rule established by the General Assembly in its resolution 36/117 B of 10 December 1981, according to which United Nations documents should be distributed only when they are available in all of the official working languages of the bodies concerned. For such documents, the chairpersons request discretion to designate in what working language or languages those documents should be made available to ensure the timely consideration by treaty bodies of all material submitted by the States parties concerned.

45. The chairpersons received during the meeting a copy of the "Plan of Action to strengthen the implementation of the Convention on the Rights of the Child" prepared in 1995 by the United Nations High Commissioner for Human Rights. Although the time remaining after the distribution of the document did not permit a discussion of its content, the chairpersons note with appreciation the efforts made to strengthen the support provided to the Committee on the Rights of the Child. They also note, however, that as a result of this programme and of the special support already received by the Committee from other sources, there is a risk of a radical imbalance emerging between the resources and support available to the Committee on the Rights of the Child and that available to the other five treaty bodies. While assurances have been given that there will be a significant flow-on effect and that the programme for the Committee on the Rights of the Child is a pilot programme that could subsequently be applied in relation to other treaty bodies, the chairpersons call for greater attention to be given to the measures necessary to ensure that such an imbalance does not occur.

46. The chairpersons reaffirm their support for the request of the Committee on the Elimination of Discrimination against Women to have its secretariat to be transferred to the Centre for Human Rights in Geneva, which is contained in Committee's resolution 14/II. The chairpersons regret that this resolution, as well as the numerous recommendations of the chairpersons of human rights treaty bodies on this matter, have not been respected. They share the Committee's view

that the Committee cannot function properly if its secretariat is physically separated from the secretariat of all the other human rights treaty bodies.

47. The chairpersons recommend that the development and maintenance of the treaty body information database system be pursued and reinforced. They also recommend that, as soon as this information system is fully operational, each member of all treaty bodies be given the possibility to access the database; and that access to documents for general distribution be made available to the public by means of the Internet Web site to be established by the Centre for Human Rights.

48. The chairpersons request the Secretary-General to make the necessary arrangements so that all experts of the treaty bodies obtain the United Nations certificates to which they are entitled during their mandate.

B. Cooperation of human rights treaty bodies with United Nations non-conventional human rights bodies and mechanisms and regional organizations

49. The chairpersons note that one of the items on the agenda for the Ministerial Meeting of the World Trade Organization (WTO), to be held at Singapore in December 1996, concerns proposals to adopt a "social clause" which would link respect for certain human rights (notably freedom of association, non-discrimination in employment, and the elimination of exploitative child labour) to access to trade opportunities. They note that whatever the respective merits of such proposals, the system of treaty supervision in which the treaty bodies are engaged already provides an important avenue for monitoring compliance with States obligations in these and related areas and that a greater effort should be made to strengthen these existing opportunities.

50. The chairpersons note that some organizations such as ILO and UNHCR have established CD-ROM databases relating to their international instruments and fields of activity and recommend that such organizations make that material available to the Centre for Human Rights and to individual treaty body members, at a reduced price, to contribute to the improvement of their work.

51. The chairpersons recommend that in the future treaty bodies consider much more carefully what kind of assistance they would like from United Nations bodies and specialized agencies. They should do their upmost to describe as precisely as possible their requests to such bodies and specialized agencies.

52. The chairpersons recognize that cooperation is a reciprocal process and recommend that treaty bodies similarly work with United Nations bodies and specialized agencies to enhance the effectiveness of their work, by providing documentation and responding to specific requests.

53. The chairpersons recommend that, where appropriate, the treaty bodies take a more active role in supporting, suggesting topics for, and cooperating in the preparation of studies by the Subcommission on Prevention of Discrimination and Protection of Minorities, as well as by special rapporteurs and other experts appointed by the Commission on Human Rights. The chairpersons note the

important contribution that special rapporteurs and other experts appointed by the Commission on Human Rights have made to the work of the treaty bodies and recommend that efforts continue to be made to increase existing cooperation. Special rapporteurs and other experts whose work is of direct relevance to the activities of a particular treaty body could schedule their visits to the United Nations in connection with the meeting of the treaty bodies concerned in order to have direct cooperation on issues of mutual concern.

54. The chairpersons recommend that written reports for general distribution be issued about the development of cooperation between the United Nations High Commissioner for Human Rights and the Bretton Woods institutions and UNDP, given the interest of various treaty bodies in developing a constructive relationship with these organizations.

55. The chairpersons are of the view that it would greatly assist the treaty bodies to have access to the country reports prepared by the World Bank and request that the Centre for Human Rights proceed expeditiously in its planned meeting with World Bank officials in November 1996 to put into place procedures for access to such documentation.

56. The chairpersons recommend that the Centre for Human Rights engage in an active dialogue with Bretton Woods institutions so that in the references to human rights standards by these institutions, the applicable United Nations human rights instruments will be given a preeminent role.

57. The chairpersons recommend that individual treaty bodies enhance cooperation with regional human rights mechanisms when appropriate. It notes with satisfaction that the Committee on the Elimination of Racial Discrimination and the Human Rights Committee are engaged in the process of establishing liaison relationships with a number of regional human rights organizations.

C. Gender perspectives in the work of the treaty bodies

58. The chairpersons wish to recall that at their sixth meeting they recommended the following:

(a) The treaty bodies shall fully integrate gender perspectives into their presessional and sessional working methods, including identification of issues and preparation of questions for country reviews, general comments, general recommendations, and concluding observations. In particular, the treaty bodies should consider the gender implications of each issue discussed under each of the articles of the respective instruments;

(b) Guidelines for the preparation of reports by States parties should be amended to reflect the necessity of providing specific information on the human rights of women for consideration by the respective committees;

(c) In undertaking investigative procedures, the treaty bodies should make special efforts to elicit information about the situation of women in the area of inquiry;

(d) Treaty bodies should consistently request gender-disaggregated data from States parties and from United Nations specialized agencies and use the data in reviewing country reports;

(e) The treaty bodies should make every effort to exchange information on progress, developments and situations concerning the human rights of women;

(f) In preparing reports of the treaty body sessions, attention should be paid to the use of gender-inclusive language wherever possible.

59. The chairpersons noted that the Committee on the Elimination of Racial Discrimination, having considered the recommendation to change its guidelines for the preparation of State party reports, decided that they did not need alteration.

60. In the light of the recommendations of the sixth meeting of chairpersons to incorporating gender perspectives in the work of the treaty bodies, the chairpersons recommend that each treaty body continue to consider how it might most effectively include this issue in its work practices.

61. The chairpersons recommend that the issue of gender perspective in the work of the treaty bodies be placed on the agenda of their next meeting to enable them to review the progress made in the meantime.

D. Assistance to States in implementing committee recommendations

62. The chairpersons recommend that treaty bodies be as specific as possible in elaborating concluding observations on State party reports involving recommendations for technical assistance to be made available by the Centre for Human Rights to the State concerned.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the representative of the Secretary-General on internally displaced persons, Mr. Francis Deng (Sudan), in accordance with Commission on Human Rights resolution 1995/57 of 3 March 1995 and Economic and Social Council decision 1995/273 of 25 July 1995.

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ANNEX

Report on internally displaced persons, prepared by the representative of the Secretary-General, in accordance with Commission on Human Rights resolution 1995/57 and Economic and Social Council decision 1995/273

1. Since the appointment of the representative of the Secretary-General on internally displaced persons in 1992, his activities have been documented in a series of substantive reports to the General Assembly and to the Commission on Human Rights. The latest comprehensive report was submitted to the Commission at its fifty-second session in March 1996 (E/CN.4/1996/52 and Add.1 and 2). To avoid unnecessary repetition, the representative deems it more appropriate to submit to the General Assembly a brief update, placing emphasis on the latest developments, and to submit to the Assembly his report on Tajikistan, where he undertook his most recent mission in early June 1996.

2. Over the past year, the representative has continued to be actively engaged in three main areas of work. The first is the development of an appropriate normative framework for meeting the needs of the internally displaced. The second area is the promotion of effective institutional arrangements for meeting the challenges of protecting and assisting the internally displaced. The third one is the undertaking of visits to countries with serious problems of internal displacement in order to promote dialogue with Governments and other actors involved in addressing the needs of the internally displaced, drawing lessons from previous experiences, and seeking to improve conditions on the ground.

3. With respect to the normative framework, the representative is considering how to address the weaknesses and gaps in international law that undermine coverage for the internally displaced. After several years of intensive work on the part of academic institutions and experts, a compilation and analysis of legal norms was prepared and submitted by the representative to the Commission in 1996 (E/CN.4/1996/52/Add.2). The compilation and analysis examined the relevant provisions of international human rights law, humanitarian law and refugee law by analogy, and their applicability to the protection and assistance needs of the internally displaced. The compilation and analysis confirms that, while existing law provides substantial coverage for internally displaced persons, there are significant areas in which it fails to provide adequate protection and which require remedy through restatement of existing law and clarification of its provisions in one document. This would serve several useful purposes. It would consolidate in one place existing norms that at present are too dispersed and diffuse to be effective. It would also call attention to the need for the better implementation of existing norms and assist the work of Governments, international organizations and non-governmental organizations in the field in protecting and promoting the rights of internally displaced persons. In addition, it would serve the educational purpose of increasing international awareness of the situation of the internally displaced.

4. The Commission on Human Rights, at its fifty-second session, called for the wide dissemination of the compilation and analysis of legal norms. Subject to the availability of funds, it should be available in the working languages of

the United Nations in the near future. The Commission also called upon the representative to continue, on the basis of the compilation and analysis, to develop an appropriate framework for the protection of internally displaced persons. The representative, accordingly, has been studying the specific form such a framework might take, and is in the process of developing a body of guiding principles. A meeting of legal experts was held at Geneva in June 1996 to develop the guiding principles. A further meeting was convened in October 1996, also at Geneva, in which United Nations agencies and non-governmental organizations participated, to discuss the principles. A meeting of lawyers from the various geographic regions will be hosted by the Government of Austria at Vienna in 1997 to review the draft principles.

5. It should be noted that the guiding principles will address all phases of displacement, including its prevention. To this end, a separate study is being prepared on the content and limitations of a right not to be displaced, which will provide the basis for the development of guiding principles pertaining to the pre-displacement phase. The guiding principles will thereby comprise the norms applicable before internal displacement occurs, those that apply in situations of internal displacement and those that apply to the post-displacement phase. It is the objective of the representative that the framework developed should provide an explicit, adequate and firm basis for the protection of and the provision of assistance to the internally displaced and that it be strongly supported by the international community.

6. The analysis and evaluation of existing institutional arrangements relevant to the internally displaced also reveal serious gaps. While there is no institution with an exclusive or full mandate for the internally displaced, there is also no political will to create a new institution or to mandate an existing one to assume full responsibility. The collaborative approach remains the only feasible option, but it is often constrained by problems of coordination, neglect of protection and insufficient reintegration and development support. Considering the intensity and scope of the crisis of internal displacement, improvements are needed to provide a more predictable and coherent response to situations of internal displacement, especially in the area of protection. An ongoing study by the Brookings Institution and the Refugee Policy Group, under the direction of the representative, has already made concrete suggestions for institutional reform, which have been disseminated, and are summarized in the various reports to the Commission on Human Rights. In 1997, a final set of proposals will be published, based on case studies and further analysis of the relevant institutions.

7. One particular development the representative would like to highlight is the increasing importance of the involvement of regional organizations. These organizations are in a position to adapt policies to regional realities, and also allow for innovative approaches to be transmitted both to affected countries within their regions and to the international system as a whole. It is essential that the capacities to cope with massive population displacement be strengthened at the local, national and regional levels. Several developments at the regional level merit reporting. The Organization for Security and Cooperation in Europe, over the past few years, has become involved with internally displaced persons in Tajikistan, Bosnia and Herzegovina, and in the Caucasus. The Organization of African Unity, through its conflict-prevention

mechanism, has been taking measures to defuse tensions before displacement occurs, and its Secretary-General has increasingly called attention to the need to address internal displacement on the continent. In 1995, the representative met with the Inter-American Commission on Human Rights of the Organization of American States, which subsequently took an important institutional step by appointing a rapporteur on internally displaced persons. The representative recommends that other regional bodies also consider establishing institutional mechanisms for the internally displaced.

8. Another important development at the regional level that should be noted was the organization in May 1996 of a Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States. The representative welcomes the wide range of initiatives proposed in the Programme of Action with regard to internal displacement. If effectively used as a framework for cooperation and action, the Programme of Action should result in the development of policies, legislation and institutions at the national level to cope better with the management of population displacement.

9. Since it is Governments that must bear the major responsibility for the plight of internally displaced persons, the programme of country visits undertaken by the representative, which emphasize solution-oriented dialogue with Governments, is one of the most important features of the mandate. It is particularly significant that country missions focus attention on specific crisis situations in the affected countries and make recommendations on what can be done by the Government concerned in cooperation with the international community, including governmental and non-governmental organizations, to alleviate the situation.

10. It is with the operational importance of country missions in mind that the representative considers it opportune to submit to the General Assembly the report on his June 1996 mission to Tajikistan, bearing in mind that the situation in that country continues to deteriorate and presents an ongoing challenge to the international community. The findings and recommendations in the report focus on the need for improved coordination between the Government and the humanitarian and development organizations operating within the country; the need to direct development activities into sustainable and self-reliant programmes; the need for continued efforts to strengthen human rights protection and the rule of law; and the importance of negotiating a comprehensive peace.

11. As has been emphasized repeatedly in the reports of the representative, country visits provide an important opportunity for a constructive exchange of views with Governments and other pertinent actors and also help raise the level of awareness within the country to the problem of internal displacement. Country visits, however, are bound to have a very limited impact unless there is appropriate follow-up. Constant monitoring is needed to ensure that situations are, in fact, improved and the recommendations arising from the representative's discussions with Governments and international organizations are carried out.

12. Building on the activities of the mandate over the past several years, in the year ahead, attention will continue to be focused on these three areas -

developing a legal framework, improving institutional arrangements at the international, regional and national levels, and enhancing the capacity of the mandate to play its catalytic role with Governments and international organizations more effectively.

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Internally displaced persons

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng (Sudan), in accordance with Commission on Human Rights resolution 1995/57 of 3 March 1995 and Economic and Social Council decision 1995/273 of 25 July 1995.

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ANNEX

Report on internally displaced persons prepared by the Representative of the Secretary-General, Mr. Francis Deng, in accordance with Commission on Human Rights resolution 1995/57 of 3 March 1995 and Economic and Social Council decision 1995/273 of 25 July 1995

Profiles in displacement: Tajikistan

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I. INTRODUCTION

1. The main cause of displacement in Tajikistan has been the civil war that took place during the second half of 1992. More than 20,000 persons were killed 1/ out of a population of about five and a half million. 2/ The fighting led to the exile of approximately 100,000 persons into neighbouring countries 3/ and the internal displacement of some 600,000. 4/ The internally displaced population comprised mainly civilians from the south-western part of the country in search of safety in the cities or in their ancestral homes.

2. While displacement in Tajikistan shares common characteristics with other conflict situations, it also demonstrates distinct features. With the collapse of the Union of Soviet Socialist Republics, which created a power vacuum, latent conflicts erupted among different ethnic groups within the artificial borders of states. In Tajikistan, antagonism quickly emerged between those wanting to preserve the current system and power structures and those challenging the regime by advocating reforms. The conflict was compounded by regional differences, with ethnic and political affiliations. It gradually degenerated into widespread violence, perpetrated by proponents of both sides, and escalated into civil war. Furthermore, the acute armed conflict resulted in massive upheavals and dislocation of populations. However, the armed conflict was relatively short-lived, and the Government attached a high priority to a prompt return of civilians. It was also willing to accept offers of international assistance at an early stage. Thus, the international community was able to facilitate in a comprehensive and effective manner the return of the displaced. The majority of the civilians were able to return to their home areas within a few months after their displacement. By March 1993, 70 per cent of the internally displaced had returned to their villages. 5/

3. Although most of those internally displaced by the civil war have returned, 6/ their successful integration, as well as the return of those who remain displaced, will depend on the extent to which Tajikistan can overcome the challenges of economic and social reconstruction after the devastating effects of the civil war, and progressively adapt the country to a new political and economic environment. Reconstruction and development, however, cannot be fully carried out before the underlying causes of the conflict have been addressed and resolved through peaceful means. In this regard, it is worth noting that the currently deteriorating security situation and recent hostilities in some areas of Tajikistan are generating new displacements. 7/

4. The Representative of the Secretary-General on internally displaced persons initially requested to visit Tajikistan in February 1994. He reiterated his request in June 1995 and February 1996, at which point the Government extended an invitation for him to visit the country. The mission was eventually carried out between 1 and 12 June 1996. Besides focusing on the current conditions of those who remain internally displaced and those who returned after the civil war, the purpose of the mission was to study how the return was achieved and how further displacements could be prevented.

5. The Representative wishes to express his appreciation to the Government of Tajikistan for having invited him to visit the country, and for the candid and open attitude of his interlocutors.

6. During his mission, the Representative met with the Prime Minister, the Ministers of Foreign Affairs and Interior, senior officials from the Ministries of Justice and Labour, as well as with the Prosecutor-General. He also had meetings with the Special Representative of the Secretary-General for Tajikistan, the representatives of the Organization for Security and Cooperation in Europe (OSCE), representatives of United Nations agencies and programmes, including the Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Development Programme (UNDP), World Food Programme (WFP), United Nations Children's Fund (UNICEF), and the United Nations Mission of Observers in Tajikistan (UNMOT), and other local and international organizations and members of the diplomatic corps. The Representative visited internally displaced persons in Khorog and Rushan, located in the Gorno-Badakhshan Autonomous Oblast. 8/ He also visited returnee sites in the capital, Dushanbe, as well as in Bokhtar, Shartuz and Kabodian, located in the Kurgan-Tyube region of the Khatlon Oblast. During his visits to the provinces he was received by local government officials. The Representative also met with members of the opposition.

7. The general policy of the Representative in carrying out his mandate is based on the fundamental recognition that problems linked with internal displacement primarily fall within the national sovereignty of the state concerned. At the same time, it has become recognized that sovereignty carries with it responsibilities of protection and assistance from the state towards its own nationals. This combination of sovereignty and responsibility provides the framework for a cooperative approach in which Governments are expected to invite or at least accept international support if their own capacity to provide protection and assistance is limited. In this spirit, the Representative seeks to understand the problems of internal displacement in the country visited and make proposals for solutions. As has been reflected in his previous reports to the Commission on Human Rights and the General Assembly, internal displacement often reflects a deeper crisis affecting the larger society. Thus, while it is important to address the problems faced by internally displaced persons, the Representative sees that function as part of a larger mandate to explore the root causes of the conflict in a dialogue with the authorities and then seek durable solutions. In addition, he considers it important to explore ways in which the international community can best assist the Government in the discharge of its responsibilities towards the internally displaced.

8. Because current initiatives in Tajikistan emphasize a reintegration of the displaced, the mission covered a broader range of parameters than has normally been the case in missions relating to ongoing conflict situations. This report is therefore divided into five main parts. Section II contains an overview of the crisis which generated internal displacement in Tajikistan. Section III discusses patterns of displacement, return and the response of the international community. Section IV addresses the reintegration of returned internally displaced persons and focuses on steps the international community has taken to promote sustainable development and the protection of human rights, in the light of ongoing needs. Section V describes initiatives taken by the international

community to further the peace process through peacekeeping, political negotiations and other reconciliatory activities. Finally, the report concludes with some observations and recommendations.

II. CAUSES OF DISPLACEMENT: BACKGROUND TO THE CONFLICT

A. Social and economic characteristics

9. Tajikistan is located in Central Asia, bordering Afghanistan in the south, China in the east, Kyrgyzstan in the north and Uzbekistan in the west. Tajikistan has a large part of its 143,100 square kilometre territory covered by high mountains, frequently creating problems of movement between different parts of the country. The lowlands and valleys are cultivated and, before the war, 48 per cent of the population worked in the agricultural sector. Of the remaining part of the working population, 23 per cent worked in the service sector, 16 per cent in construction, and 13 per cent in industry. 9/ Ever since the Soviet period, Tajikistan has been exporting cotton and aluminum and in return importing food. Although there was also some cultivation of fruits and raising of cattle and sheep, the lack of diversity in agriculture rendered the country vulnerable. Tajikistan was even before the civil war among the poorest and least developed of the Commonwealth of Independent States countries, and with the dissolution of the Union of Soviet Socialist Republics and the civil war, it has become increasingly difficult for Tajikistan to feed its own population.

10. Tajikistan is divided into four main administrative regions: the Leninabad Oblast in the north; the Khatlon Oblast, covering the Kurgan-Tyube area in the south-west and the Kulyab area in the south-east, which was recently merged from two oblasts into one; and the Gorno-Badakhshan Autonomous Oblast in the east of the country. In addition, the Republican Subordinated Rayon, covering the central part of the country, comprises the Gissar and Garm Oblasts. According to a census conducted by the former Union of Soviet Socialist Republics in 1989, the population, then totalling 5.1 million, consisted of three major ethnic groups: 10/ 61 per cent Tajik, 23.5 per cent Uzbek and 7.6 per cent Russian. 11/ The term "Tajik" traditionally has been used to designate Persian-speakers, as opposed to the Turkic-speaking populations in other Central Asian nations. The Tajik language is closely related to Farsi and to the Dari spoken in Afghanistan. Most Tajiks are Sunni Muslims who were converted to Islam following the Arab invasion of Central Asia in the seventh century. However, the Tajiks originating from Gorno-Badakhshan, whose inhabitants are known as Pamiris after the mountain range, are Ismaili Muslims. The Pamiris consider themselves different from the other Tajiks and speak different languages.

11. The Tajiks formed a unique national group under the Samanid dynasty (tenth century, 903-993 AD), which ruled a part of today's Tajikistan from Bukhara in present-day Uzbekistan. After Mongol invasions during the thirteenth century the region was conquered by Tamerlane, and Turkic khans subsequently ruled the Tajiks. Later on, the Tajiks were ruled by the Emirate of Bukhara; today's central and southern Tajikistan correspond to the eastern portion of the Emirate. With Russia's economic expansion and conquest of Central Asia,

Russians started settling in the Ferghana Valley region, a part of which now constitutes the northern part of Tajikistan. 12/

12. In 1924, the Soviet Government established Tajikistan as an autonomous republic within the Uzbekistan Soviet Socialist Republic. The following year, the Pamir mountain region on the Afghan-Chinese border was transferred to Tajikistan under the name of Gorno-Badakhshan. While Gorno-Badakhshan represents some 45 per cent of the country's present territory, its inhabitants account for only 6 per cent of the total population. In 1929 Tajikistan was separated from Uzbekistan and made into a full Union Republic, and a part of the Ferghana Valley region was transferred to Tajikistan's territory. The transfer of this part also increased the Russian and Uzbek minorities in the country. By drawing up new borders the cities of Bukhara and Samarkand, which in the past had been important centres of Tajik culture, were placed outside Tajik territory, thus weakening national cohesion and the prospects for a common identity.

13. The demographic composition in the south-western part of Tajikistan was altered in the following years as a consequence of the Soviet Union's strategy of developing the Republic's capacity to produce cotton. To achieve this there was a need for enhanced irrigation and a larger workforce. Under Stalin many persons from the mountainous areas of the Garm and Gorno-Badakhshan regions were forcibly transferred to this part of the country and therefore only integrated with the local population to a limited extent. While the Garmis and Pamiris integrated to some extent with the local populations and some intermarriages took place, especially in urban areas, they usually lived in separate villages and many retained their sense of ethnic separateness.

14. Thus, it can be said that as a national entity, Tajikistan was artificially created in the sense that an external power united regions that had only had a limited extent of common identity. The coexistence between different ethnic groups was also further complicated by the creation of areas with different populations which co-existed rather than integrated with each other. Nevertheless, the Soviet legacy also left a uniting ideology of collective identity that has contributed to some sense, though underdeveloped, of a Tajik national identity, and in spite of the civil war, there are no overt moves today towards secession from the country.

B. Independence and civil war

15. With the economic decline during the last years of the Soviet Union's existence, massive subsidies that had previously been allocated to Tajikistan decreased sharply. At the same time, along with Mikhail Gorbachev's policy of glasnost, the situation in the Soviet Union allowed for increased autonomy for its republics. As elsewhere, the power vacuum which occurred in Tajikistan led to simmering conflicts between Tajik regional groups, which competed for influence and wealth. Because the Tajik authorities had neither developed an independent economy for the country nor provided the state with a secure economic basis, the authorities were not able to adapt rapidly enough to new developments, and the resulting financial crisis heightened insecurity and dissatisfaction. In a context of increased political liberty and economic

depression, various movements within Tajikistan began to look back to traditional values, which had to various degrees been repressed in the past.

16. The search for an identity led to claims for increased national autonomy, sponsored to some extent by the Government 13/ but in particular by some emerging political parties. The combination of a deteriorating economy, coupled with increasing voices for self-determination, initiated a trend of emigration by minorities of Russian and European origin who felt increasingly vulnerable and also saw better prospects for their future outside Tajikistan. Since these groups constituted the majority of skilled workers and administrators in the country, their departure further contributed to the general economic recession.

17. There were, however, not only aspirations for national independence but also for regional autonomy and a revival of religion. These aspirations triggered tensions within society, as they reflected a competition between regions for access to increasingly scarce resources, and between proponents of an Islamic society on one hand and those who upheld a secular State system.

18. As these and other groups began to advocate change in their society, political blocs started to take shape. On the one hand, a diversity of opposition parties called for political and economic reforms, for pluralism and democracy, 14/ increased regional autonomy, 15/ or an Islamic State. 16/ On the other hand, some groups sought to preserve the dominant political power they had gained under the Soviet regime. To a large degree, political aspirations coincided with regional origins. Those who contested the political establishment were supported mainly by the eastern regions of the Garm valley and the Pamir mountains, as well as by persons who originated from these regions, now living in the south-western Kurgan-Tyube area and the capital. The Government, for its part, drew a majority of its supporters from the Leninabad region in the north, which had always held political power in the country, and the Kulyab area in the south-east, its traditional partner.

19. In February 1990 large demonstrations in Dushanbe led to 21 deaths. 17/ The Government used these events as a pretext to ban opposition candidates from taking part in the Tajik Supreme Soviet, or Parliamentary, elections. In August 1991, Tajikistan's president, Kakhar Makhmanov, openly expressed his support for the coup d'état attempt against Gorbachev. After the failure of the coup d'état, demonstrations took place to demand his resignation. The following month Tajikistan declared its independence, 18/ and the Communist Party-based Government was forced to resign. After Kadreddin Aslonov had been named acting President, 19/ he suspended Communist Party activity. The Parliament, however, was still dominated by former Communist Party members who countered the reforms. They declared a state of emergency 20/ to stop demonstrations in support of Aslonov and forced his resignation. Former First Party Secretary Rakhmon Nabiyev was elected the new President, and he soon lifted the ban on the Communist Party.

20. This triggered more than one week of mass demonstrations, and Nabiyev had to resign in October 1991. However, he was reinstated after presidential elections were held the following month, which he won over a former reformist deputy. 21/ Despite opposition protests, the Kulyab and Khodjent allies, forming 60 per cent of the nation's population, were easily able to keep a

Khodjenti communist in power. 22/ Together with the parliament Nabiyev now restored censorship and introduced amendments to the criminal code directed at any opposition to the Government. Tensions between those in favour of keeping or reforming the system nevertheless continued, manifested through continued demonstrations. In March 1992 a demonstration took place to demand the resignation of the speaker 23/ of the Supreme Soviet. This demonstration was rapidly joined by other opposition parties, 24/ who soon amplified their demands by advocating a constitutional referendum, parliamentary elections, and finally the resignation of President Nabiyev and the establishment of a coalition Government.

21. However, the Parliament refused to make any concessions to the opposition, and during the spring of 1992 demonstrations for and against the Government continued and increased in intensity. On 26 April, as a large demonstration against the Government was being held, a mass demonstration in support of the Government and President Nabiyev was also organized, for which many demonstrators had been driven from Kulyab into Dushanbe. With two large demonstrations taking place less than one mile from each other, the capital was paralysed; violence erupted between paramilitary groups supporting each of the sides, which included hostage-taking, beatings and killings.

22. On 1 May 1992, the violence increased after the President had issued a decree authorizing 1,800 automatic weapons to be distributed among his supporters to create an extraordinary battalion of the "National Guard". During the following days armed clashes took place within the capital to gain control over key government buildings. 25/ On 7 May, in the face of these serious disturbances, the President signed a decree for the establishment of a coalition Government with eight ministerial posts allocated to the opposition, including the Ministries of Interior, Security, Defence and Foreign Affairs. He also reduced considerably his own power and ordered the disbanding of the "National Guard". 26/

23. The establishment of a coalition Government ended the two parallel demonstrations in the capital. However, the Oblasts of Leninabad and Kulyab refused to recognize the new Government, so the violence continued, spreading from the capital to the countryside. On 10 May, 14 persons were killed and dozens wounded when security troops fired on demonstrators who had come to hear the President speak and had started to attack barricades that had been set up in front of the building where they thought he would be. Supporters of the regime were in turn victims of violence from opposition groups. In one such episode a column of buses driving to Dushanbe to bring pro-government supporters back to Kulyab was forced to stop. The guards of the column were killed and the chauffeurs taken as hostages, beaten and then released. In addition, there were reportedly robberies of Kulyabis in Dushanbe. Similarly, in early June 1992, defeated supporters of the opposition living in Kulyab were forced to flee to Dushanbe, and the remaining ones suffered continued attacks. As the situation further polarized, the first movements of internally displaced persons started.

24. During the summer, as the armed antagonists received increased material support, the fighting escalated into civil war with particular intensity in the southern part of the country. It has been alleged that Government forces received support from the Russian Federation and Uzbekistan, while the

opposition received support from Afghanistan. 27/ The opposition forces carried the initiative in the early phases of the war. The town of Kulyab was apparently subjected to a blockade by the opposition forces, which resulted in famine. 28/ Pro-government forces, including members of the previous National Guard, which had changed its name to the National/Popular Front, then launched a counter-offensive. The most serious fighting took place in the Kurgan-Tyube area, with reports of atrocities, including summary executions, torture and massacres of civilians, committed by both parties to the conflict.

25. As the pro-government forces started gaining ground, a predominant feature was that houses and sometimes entire villages belonging to displaced civilians were systematically 29/ looted, with roofing material, windows and doors removed, or simply destroyed by being set on fire. In the areas visited by the Representative there was a striking contrast between villages or neighbourhoods which appeared either totally destroyed or completely unharmed, in accordance with the ethnic origin of their inhabitants. The pattern of destruction reflected the extent to which ethnic identity had become an important factor in the conflict, since only houses belonging to the defeated Garmi and Pamiri communities were destroyed. While the motive for this massive destruction might have been to prevent the return of the displaced, a contributing element to the looting was probably also the opportunity for neighbouring communities to acquire unprotected goods.

26. The coalition Government gradually proved unable to rule. On 7 September 1992, the opposition forced elected President Nabiyev to sign a letter of resignation, and Akbarshah Iskandarcv, the Chairman of the Supreme Soviet and a member of the opposition, became acting President. The resignation of President Nabiyev was not accepted by the Parliament, which, in a special session held in Khodjent 30/ on 16 November 1992, abolished the institution of the President and instead elected Imomali Rakhmonov as the new Chairman of the Supreme Soviet.

27. The opposition reacted to this by refusing to let the new Government return to Dushanbe. This led to a week of severe fighting in the capital, where the pro-Government forces were assisted by Uzbek paramilitary forces from the Gissar region west of the capital, before the new Government could enter in mid-December 1992. As the opposition had now been defeated in the Kurgan-Tyube area of the south-west and in Dushanbe, the offensive moved in the period of January-March 1993 towards the last strongholds of the opposition, east of the capital towards the Garm valley.

28. In addition to the serious violations of humanitarian law committed by both sides during the civil war, there were also serious human rights violations and abuses in the aftermath of the conflict. In the capital armed gangs committed killings of perceived opponents. It has been reported that in December 1992 buses were routinely searched, and persons with identity cards revealing they were of Pamiri or Garmi origin were forced out and either killed on the spot or taken away and later found dead or never heard from again. 31/

III. PATTERNS OF DISPLACEMENT AND RESPONSES

A. Patterns of displacement

29. The patterns of displacement were intimately linked to the nature and development of the conflict. In this regard, the term "regionalism" 32/ and the related "two homes" concept are key to understanding the lines along which the conflict developed and the routes fleeing civilians decided to take. With the gradual polarization of society, the issue of ethnicity became predominant, and persons who found themselves in a minority position in their areas of residence sought refuge in their regions of origin. As the conflict escalated into civil war this pattern intensified, only influenced insofar as the presence of the armed forces prevented such a movement. Thus, the sudden advance of the pro-government forces in the south-west divided the region in such a way that targeted civilians were forced to flee either southwards, towards Afghanistan, or northwards, towards the capital and the eastern parts of the country. Thus, the cause for the flight of those who left the country and those who became internally displaced was the same. These two groups also faced similar problems upon return, in terms of needs for material support and security.

B. Assistance provided during displacement

30. Many of the internally displaced did not receive international assistance before they returned to their homes. For most internally displaced persons, however, the consequences of flight were mitigated by extended kinship relations. As a result of the previous population transfers five decades earlier, followed by economic migration, many of the displaced had historical links with their ancestral homelands. Since the war was not fought simultaneously in the whole country, and hostilities in fact never took place in the northern and eastern parts during the 1992-1993 conflict, it often was possible for the internally displaced to receive shelter, food and physical security from extended family members. The internally displaced persons therefore can be said to have two homes: the one being the region where they have ties through their origins but where possibilities for sustaining themselves are limited, the Gorno-Badakhshan or Garm region, and the other being where they have their houses and lands but where they have integrated only to a limited extent, the Kurgan-Tyube region. In contrast, those who fled towards the Afghan border were largely deprived of such family support and were therefore in desperate need of external assistance. During 1992 they were assisted mainly by the International Committee of the Red Cross (ICRC).

31. The Gorno-Badakhshan Autonomous Oblast, which had less than 200,000 inhabitants, received an influx of at least 100,000 internally displaced persons. Because of its natural environment characterized by a mountainous landscape, a hard climate and poor soil, it was already difficult for the local population to sustain itself, particularly after the collapse of the Union of Soviet Socialist Republics and the loss of subsidies from the Government after the civil war. The large number of internally displaced persons thus represented a significant additional burden to the local population. ICRC, in cooperation with the Aga Khan Foundation, therefore chose to assist the entire population, without distinguishing between the internally displaced and the

local population, primarily with food and medicines. To the extent available, the Government provided shelter in public buildings.

C. Return of the displaced

32. Most of the internally displaced returned on their own initiative, and without receiving assistance, in the first few months after the conflict had ceased. ICRC assumed responsibility for assisting the internally displaced persons in the areas to which they had fled, while UNHCR provided assistance in the main area of return.

33. In March 1993, the Government decided to forcibly return some 500 internally displaced persons from Dushanbe to the Kurgan-Tyube region. The returnees had been provided with neither food nor water for the transport, and no preparations had been made at the places of destination for their reception. The local communities, hostile to the returnees, blocked the rails shortly before arrival and refused to let the passengers off the train. They were later placed in a transit camp where they received, according to a member of this group who spoke with the Representative about his experience, poisoned water. When after 16 days they were authorized to return to their homes, protected by local police, they found that their villages had in the meantime been looted. Sixteen persons died during this episode, which generated international attention in the press. The authorities agreed after this that return transports had to be adequately prepared and accepted the participation of international agencies in carrying them out.

34. Although most internally displaced persons returned spontaneously, the International Organization for Migration (IOM), ICRC and UNHCR assisted with some return convoys. Public transportation for returning internally displaced persons also was provided by the Government when available. In 1994 plans to organize transport by road from Gorno-Badakhshan had to be cancelled because hostilities intensified along the only inland return route. In 1995, an agreement for safe passage was reached between the parties, which allowed 1,700 of the internally displaced to return, but a combination of new insecurity, bad weather and roads precluded completion of the planned convoys. There are currently plans to transport those who opt for return out of the region by plane, as mountain passes are blocked during the winter and the security situation prevents safe road transport.

D. Measures taken to facilitate resettlement

35. The displaced who had previously lived in the Kurgan-Tyube region, which had been most affected by the conflict and from which most had fled, faced multiple obstacles upon return. Many thousands of homes had been destroyed during or after the conflict or looted by neighbouring communities. In addition, houses and land had been occupied, often by those who had fought on the winning side and who considered their new acquisitions to be rewards for their victory. Seeds for planting had been consumed, so there was little possibility of cultivating food. The health care system was in a state of collapse as a result of destroyed health centres and insufficient numbers of

qualified staff, many of whom, like other skilled workers throughout the country, had emigrated before and during the civil war. Medical drugs and equipment were also lacking. Furthermore, as water pumps often had been damaged or stolen, there was an urgent need to repair or replace them in order to avoid contamination and epidemics.

36. With regard to security, the displaced population, as mentioned above, had been identified with the enemy as the conflict developed and was perceived as responsible for having triggered the civil war. There was therefore considerable hostility among the local population towards the return of the displaced. The problem of insecurity was particularly difficult during the early post-war period, when the lack of law and order allowed uncontrolled armed bands to take justice into their own hands. This period was characterized by numerous disappearances, killings, beatings and other forms of harassment of the returnees, particularly in the capital and in the Kurgan-Tyube region. This insecure situation was threatening to further deteriorate, not only preventing a return of the displaced but also forcing them into exile, with the potential for destabilizing the whole region.

37. In this context, only a comprehensive approach could stabilize the situation, provide the necessary confidence among the displaced to promote their return and prevent new outflows of refugees. Because of the massive destruction, humanitarian assistance had to focus on basic needs for food, shelter and health. Improved security to restore the confidence of the displaced population was equally important. The lead United Nations agency to promote return, UNHCR, accordingly designed and implemented a programme of return and reintegration that linked assistance with protection. Although the returning refugees and internally displaced persons were particularly exposed to the above-mentioned problems, some of the difficulties were also affecting the society at large. It was therefore considered important not only to provide assistance to returning refugees and internally displaced persons in an equal manner, but also to cover some of the needs faced by the whole population, in order to avoid jealousy and resentment and to dissipate the significant ethnic tensions between the local communities.

1. Physical security and legal protection

38. During the civil war pro-government forces pursued a strategy of "cleansing" the conflict areas of the opposition and of their perceived or potential supporters, 33/ namely the Garmi and Pamiri population. As a result, many thousands of internally displaced persons who had massed along the Afghan border were forced to flee from the Kurgan-Tyube region into Afghanistan during December 1992 and January 1993. However, the Government soon realized that there was a need to reverse this policy, and the return of the displaced was declared a national priority.

39. Several factors account for this change. In addition to the Government's concerns for the displaced civilians was the need for international legitimacy. To obtain this it would have to demonstrate a sense of responsibility for the entire population. Influence and pressure were exercised by the Russian Federation, Uzbekistan and the United Nations. Other reasons were the need to

stabilize the situation in the country and to weaken the opposition by removing a possible source of recruitment. Still another reason stemmed from the economic crisis and the Government's need for workers to return to the cotton farms. Since the recent break-up of the Soviet Union and the reduction in the Government's capacity as a result of the civil war, there was a commensurate need for international assistance to achieve the goal of return. The new policy therefore led to close cooperation between the Government and the international community, rendering an effective international response possible.

40. Through public statements 34/ by the President and the Minister of Interior displaced persons were encouraged to return to their home areas. Moreover, local officials were informed that return and reintegration were national priorities. These statements were important in that they contributed to the restoration of public confidence and could be referred to during discussions with local authorities to remind them of their protection duties towards the returnees.

41. The capacity of the Government to provide security was initially limited. Its entry into power did not reflect a unified coalition. Rather, it had been brought to power by irregular forces which were to some extent operating outside its control. In spite of a commitment by the Government to facilitate the return of the displaced, their integration was difficult because of the resentment felt by the "winners" towards the returnees. In order to strengthen law and order the Government made efforts to gradually increase its command over these paramilitary groups. A first step in this direction was to integrate former members of paramilitary groups into the regular security forces and civil administration. Although this contributed to an improvement of the situation, it proved to be insufficient, because the former fighters, who sometimes had lost their relatives in the war and had little compassion for the returnees, could now abuse state authority by ignoring complaints or violating other human rights. As a consequence, a second initiative was taken to ensure that those who occupied posts in the relevant public services had the necessary qualifications. These first steps were important contributions to improving the security situation, and since then the worst abuses have markedly decreased.

42. The Government also adopted a law "on forced migrants", which was enacted in mid-1994. This law regulates registration procedures and provides for assistance to and protection for the internally displaced. During the displacement phase, the law grants internally displaced persons the right to rent-free accommodation, assistance to find work or alternatively to be granted unemployment allowances, and free food assistance in their place of temporary residence. The law further provides for the return of their property or for compensation and protection against forcible return. When resettling, internally displaced persons are entitled to free return transport, the right to repossess their property, a lump sum allowance, temporary shelter free of charge, free meals and foodstuffs, medical services, and work equivalent to their previous experience or training courses where required. They are further entitled to assistance with placing their children in schools and to a pension or limited salary according to their period of absence.

43. According to the law the status of "forced migrant" is granted for a period of three years. However, a presidential decree has since removed this time-

limit. Although the law has been important in providing accommodation in public buildings for those who could not be helped by extended family members, the practical bearing of most of its provisions has been severely limited by the lack of necessary funds. A presidential decree also has made available government loans on generous terms for returnees wishing to rebuild their houses. 35/ However, the formerly displaced explained to the Representative that in practice the credits are difficult to obtain, and the amounts too limited.

44. With regard to the protection of legal rights of the returnees, the fundamental premise of UNHCR was that the State should assume its responsibilities towards all its nationals. Because of the ethnic antagonism among the local communities, it was important that cases were solved as soon as possible to avoid outbursts of ethnic tensions which would have jeopardized reconciliation, threatened the return movement or led to further displacement. The strategy pursued was therefore primarily to ensure that the law was being applied in a coherent and non-discriminatory manner by the relevant authorities, so that they would not be perceived as ethnically biased. UNHCR approached the problem by deploying field officers in the return areas who actively monitored human rights conditions, registered complaints of the returnees with the relevant government authorities, and followed up the cases to ensure that appropriate action was taken. In cases of alleged crimes, this meant the carrying out of investigations, and where necessary, these would be followed by prosecution and trial. Similarly, in cases of alleged illegal house occupations, the field officer would transmit the information to the local prosecutor through a letter, referring to the commitment of the Government to the return and reintegration of the returnees and requesting that an investigation be carried out followed by an eviction where this was found to be justified. A copy of such correspondence would also be sent to the central authorities.

45. While UNHCR was actively involved in following up on individual cases brought to its attention, it did not take a stand with regard to the merits of individual cases. Its intercessions with local authorities were based on respect for their competence in accordance with Tajik laws, including penal law, civil and criminal procedures, as well as more specific legislation, such as the law on "forced migrants" and on house occupation. The cases were often solved in an informal manner between the occupant, the alleged victim, the field officer, and the local official. Other cases had to be referred to the courts. Only for the most serious cases of non-compliance by local officials would the matter be raised with central government authorities.

46. As a major international organization, UNHCR enjoyed the necessary respect to assume an important role in protection by following up cases brought to its attention. For law enforcement officials, a request from UNHCR also served as a useful "excuse" to take action in cases where the alleged offender would otherwise have been in a position to be threatening or was a relative of the official. Bringing the victims into contact with the authorities, so that complaints were acted upon, helped to reduce the lack of trust towards the authorities. By mediating between hostile communities the field officers also made a significant contribution to restoring confidence.

47. With the phasing down of its activities in Tajikistan, UNHCR handed over its protection activities to OSCE. Since this organization has a broader mandate than UNHCR, it aims to strengthen the legal protection of other segments of the population as well as returnees, both in areas of return and elsewhere. OSCE has taken over three of the UNHCR field offices and plans to expand its field presence to other areas of Tajikistan and engage in capacity-building activities on a broader range. Like UNHCR, OSCE sees a direct link between protection and reintegration, between urging local authorities to investigate returnee complaints fairly and averting outbreaks of ethnic hostility. Accordingly, the OSCE field officers consider individual cases of illegal house occupation, often issuing statements for court cases; bring cases of mistreatment in prisons and police harassment to the attention of local and national authorities; and provide a communications link by radio and letter between Tajik refugees in Afghanistan and their family members in Tajikistan. While internally displaced persons and refugee returnees have been the main focus of its efforts, OSCE addresses human rights issues for the general population, including ethnic Uzbeks and Russians. As a regional political organization of which Tajikistan is a member and which had established a rapport with the Government before becoming involved with humanitarian work, OSCE is in a position not only to monitor human rights but to support the development of the entire democratic process, combining an active field presence with political influence.

2. Relief assistance

Shelter

48. In the initial phases of the emergency UNHCR distributed temporary shelter materials, clothing and food. The major part of UNHCR assistance, however, was geared towards the reconstruction of 18,500 houses in 170 villages, mostly in the Kurgan-Tyube region. The returnees were provided with kits, each of which consisted of roofing elements, nails and asbestos sheets. For reasons of equity the kits were standardized so as to avoid problems of evaluation of individual requirements and potential jealousies. UNHCR first checked lists made by the local authorities to ensure that the recipients were indeed the intended beneficiaries, that is, that the house occupants were the legitimate owners, 36/ and that neither family, friendship ties nor fear had entered into consideration by the official who had been charged with preparing the lists. UNHCR would then require that the beneficiaries set up the walls of the house by themselves before delivering the materials. To help families who did not have the capacity to reconstruct their own homes, because the husband had been killed or because help from the local community was not available, UNHCR also initiated a "food for work" programme whereby teams of construction workers would rebuild the houses.

49. The roofing material had to be imported, and because of delays in delivery 37/ or funding, the implementation of the housing programme was slower than initially expected. The deliveries allowed for the reconstruction of 7,000 homes by September 1994, a further 7,000 by April 1995 and 4,800 houses between June 1995 and April 1996 38/. In addition, the Government agreed to deliver shelter material for 1,000 houses with UNHCR funding. 39/ One positive side

effect of the delays was that extra time was allowed for improvement in the planning and implementation of the projects. The ongoing delivery of assistance also generated goodwill on the part of the authorities, which was an important asset for the organization in carrying out protection activities on behalf of the returning internally displaced persons.

50. Non-governmental organizations assisted in the reconstruction as well. Save the Children (United States) cooperated with UNHCR and the World Food Programme (WFP) in carrying out a food for work project, while Shelter Now International and Caritas initiated the production of local tiles in the Garm and the Kurgan-Tyube regions respectively. 40/ In view of recurring hostilities that have taken place between opposition and government forces in the area of Tavildara, UNHCR decided not to provide assistance for reconstruction there, as this could have induced the displaced to return to an area in which it was considered too dangerous to resettle.

51. In addition to the problem of illegal house occupations, a related issue has been how to address the question of restitution of property in cases where the displaced sold their houses before departing, under duress, and where the new owners sometimes made later investments. Unlike many other situations of internal displacement, some persons managed to sell their property before fleeing. The conditions under which the sales were concluded - in haste, out of fear of destruction of the property, and with little prospect of return - often led to a very low price level. With the return of the displaced, conflicting interests arose with regard to the possibility of the former owner rebuying his house, as well as the price he would have to pay. In his meeting with the Representative, the Prosecutor-General presented the dilemma he faced in addressing these issues. On the one hand, he considered that such disputes should be dealt with in accordance with the law, according to which these contracts are valid and restitution is precluded if no pressure has been exercised by the buyer. On the other hand, he recognized the fundamental importance of achieving reconciliation. He was of the opinion that given the extraordinary circumstances created by the civil war, a new law might be enacted to solve the problem. With regard to the evaluation of property, a judge in Khatlon proposed that the former owner be allowed to rebuy his house and tie the original price to a stable foreign currency, converting the equivalent into current Tajik roubles, in order to make up for any depreciation of the local currency and for investments made in the interim period.

Food

52. Tajikistan's food production covers less than one third of domestic needs, 41/ and with the decline in national revenues the population has become heavily dependent on food aid by the international community. It has been necessary to continue food deliveries in both the countryside and the cities since many persons have not been able to earn a sufficient income since the war. The Representative noted during his visit to two returnee communities in the outskirts of Dushanbe that many households were cultivating vegetables in their kitchen gardens. However, most of these plots of land are of insufficient size to satisfy the nutritional requirements of families.

53. Food assistance was initially distributed by UNHCR on behalf of WFP. UNHCR also gave a one-time distribution to recent returnees and funded Save the Children Fund (United States) to distribute some seeds among the different ethnic groups. WFP and other implementing partners put a strong emphasis on reaching vulnerable groups. Non-governmental organizations, such as Care International, German Agro-Action, ICRC, and Save the Children (United Kingdom), for example, thus do not classify returning internally displaced persons and refugees in a category by themselves, but include them among the beneficiaries when they fall within other criteria, such as the elderly poor, widows, sick and handicapped persons, families with more than five children, women-headed households, young mothers, pregnant women and girl children.

54. When the Representative visited the Kurgan-Tyube area he met with some persons who had been living in a mosque since their return to their home area two months earlier. The returnees complained about insufficient food, although WFP had distributed rations there earlier. When the Representative learned that they had not started to cultivate their lands since returning he asked how long they were expecting to continue to live on wheat flour distributions. Both the returnees, and later local government representatives responding to a similar question, answered that this was "as long as you [the international community] are willing to feed us". When WFP staff carried out a new distribution a few days later, they noted that the food delivery had also attracted other people to the mosque from the surrounding area. The mosque had two large rooms which were used to lodge about 150 persons. Such conditions of overcrowding entail the serious risk of spreading disease.

55. Several factors can account for this apparent attitude of passivity and the risk of dependency on the international community. Some beneficiaries may have received food assistance for such a long period that the incentive for growing their own food might have diminished. The Soviet legacy may also be a contributing factor, as the welfare State during the Soviet era would provide for the needs of everyone without any particular initiative being necessary. This role has been taken over in part by the international community, given the expectations of the beneficiaries as well as of local government representatives.

Health

56. The health care system in the past was well developed. Medical care was free of charge, with a health care unit in most villages and hospitals in both urban and rural areas. Because the system was based on curative rather that preventive health care it required considerable human and financial resources. After the civil war there were insufficient funds to maintain medical equipment and pay for medicines and salaries to medical personnel. The international community is providing medicines to health care units and in some areas encouraging qualified personnel not to leave their posts by providing food for work as a substitute for salaries. Furthermore, efforts are being made to emphasize the prevention of disease and make the health care system more effective and adapted to current economic realities.

57. In order to prevent or contain water-borne diseases UNHCR funded a rehabilitation programme under the water and sanitation sector, using Médecins

sans frontières (Belgium) and the International Rescue Committee as implementing partners. 42/ The programme aimed to manufacture, install and repair water hand pumps, submersible and other water systems, and provide some technical training of local officials. The projects were later handed over to UNICEF, the lead agency in this sector.

58. To ensure access to safe drinking water in the future, it is necessary to supplement the initial rehabilitation of the water system by training and paying technicians and by securing the provision of spare parts. For this purpose, it has been suggested that an appropriate tariff be introduced for the provision of water. It has been reported that the population in the Kurgan-Tyube area prefers open canal water and that well water is used primarily in the wintertime, when there is insufficient water in the canals. An appropriate use of drinking water would drastically reduce water-borne diseases. It is important that awareness is raised on this issue.

3. Steps taken by the local population

59. Because of initial resentment towards the displaced, local communities did not assist in their return. However, as conditions improved and the reconciliation process progressed, this situation gradually changed. In a village visited by the Representative, the neighbouring community had gradually returned the machines used for cultivation, although the formerly displaced claimed that only half of the land they had cultivated in the past had been given back, and that they could commonly find their household assets in their neighbour's houses. Nevertheless, communities had now resumed the tradition of paying each other visits during celebrations. The Representative was told that neighbours commonly expressed regret for what had happened during the war and over the fact that stronger ties had not been established between the communities, such as through intermarriage.

IV. REINTEGRATION - FROM RELIEF TO DEVELOPMENT

60. Generally, a distinction can be made with regard to the kind of assistance that should be provided to the displaced, depending on the phase of displacement. During displacement, as well as in the first period of return, relief assistance is required. Once return has been accomplished, however, the emergency response ceases to be justified. It then becomes time to focus on development assistance with a view to helping the country and its inhabitants achieve a self-sustainable development. The timing of this shift of emphasis on the respective forms of assistance, as well as the type and quality of development activities, are important factors for how soon the returning population can be reintegrated. Delays and inappropriate activities render self-reliance more expensive and more difficult to realize and risk generating passivity on the part of the beneficiaries.

61. Just as the emergency needs in Tajikistan had to be addressed in a comprehensive manner, development assistance also has to be multi-sectoral, addressing inter alia the needs for food, health and security. Improvements within these fields, through the delivery of technical, financial and material

assistance, can promote reconciliation and strengthen the rule of law and therefore also should be seen as preventive activity to avoid the crisis from escalating again.

A. Achieving self-reliance

62. The general living conditions of the population have implications for the ease with which reintegration is achieved. In this context, it must be recalled that Tajikistan's economy had been drastically weakened. A lack of foreign currency 43/ undermined the country's ability to import needed goods. Because of the loss of skilled workers and the lack of spare parts and production orders, many factories were idle. Agriculture was also seriously affected. The result has been a very high unemployment rate. 44/ Among those who are employed, many receive only irregular salaries, sometimes by in-kind payment instead of wages, and for those who are paid, the value of their salary 45/ is insufficient to cover food expenses for their family. With the depletion of the economy, welfare assistance and pensions have been severely limited.

63. Because of the economic crisis many Tajiks have been forced to earn their living through other means. 46/ Those who can, sell household assets or imported goods, produce wheat, fruits, vegetables, or livestock for their own consumption or trade, or rely on extended families. Some humanitarian assistance also allegedly is diverted from beneficiary groups and sold on the market. 47/ Establishing small enterprises is difficult, partly owing to a lack of credit opportunities, expensive or irregularly available raw materials and other input products including electricity, and the small purchasing power of society. Furthermore, the legal system does not take sufficiently into account the need for a stable and reliable framework as a basis for long-term investments. Contract law is insufficiently developed, and the court system is ineffective.

64. Returning internally displaced persons face additional problems. In spite of government commitments and legislation to ensure that returnees regain their previous employment, persons of Garmi or Pamiri origin often lose their posts to persons on the winning side in the conflict. Women, who often have become responsible for supporting their households because their men have been killed, have joined the armed opposition, live in exile, or are hiding to avoid conscription, find it even more difficult to find or keep employment. One effect is that children have had to contribute to the family income, which in turn has reduced school attendance. Because of the unstable security situation many road-blocks have been set up, and since internally displaced persons belong to the ethnic minorities identified with the enemy, they are more exposed to harassment and confiscation at these checkpoints. Trade is therefore particularly difficult for them.

65. Although the amount of delivered food has been massive, the larger challenge is to promote food security, since international efforts can only be supplementary to national production. Steps taken to increase private production have been hampered by insufficient privatization and distribution of public land to cultivate wheat. In rural areas the distribution of seeds has increased food production to some extent, but a lack of sufficient land,

fertilizers, machinery, and quality seeds 48/ has limited the potential. Some analysts maintained in their discussions with the Representative that Tajikistan might opt instead for developing other sectors where it can be comparatively more competitive and import food with the income earned. In order to increase the availability of food among the population, international organizations have taken steps to strengthen local production by supporting the establishment of small bakeries and mills. There are also suggestions for the elaboration of a strategy to develop a distribution system, through voluntary associations of farmers and the training of traders, so as to facilitate the purchase of necessary input goods and the sale of the agricultural products.

66. In the autumn of 1994 UNHCR initiated a programme of income-generating activities in the Kurgan-Tyube region working with two non-governmental organizations, Relief International and the International Rescue Committee, as implementing partners. The aims of these so-called quick impact projects were to offer the returnees a source of livelihood, provide the communities with necessary commodities, strengthen the economy, and facilitate integration through the creation of small-scale production of a variety of household goods. With the assistance of Relief International some 1,185 49/ direct participants, almost exclusively women of different ethnic backgrounds, produced coats, socks, shirts and shoes, mattresses and carpets, or engaged in oil pressing and rabbit raising.

67. As the name of the projects indicates, the emphasis was to achieve rapid results, and they were carried out on a short-term basis. The objectives set were reached successfully insofar as the aims were to provide income and goods, since the products were paid for and distributed or consumed by the households. However, it was estimated 50/ that the objective of strengthening the economy was only partially achieved. Since the managers procured the input material and priced and marketed the product, the projects did not provide the women with new technical skills and knowledge on how to manage business. Integration was promoted by letting various ethnic groups benefit from the projects, but could probably have been enhanced through the increased interaction with suppliers and customers, had these activities been carried out by the participants themselves. The International Rescue Committee established soap production sites, shoe manufacturing facilities and restarted poultry farms which had ceased production. Because of the short time-frame and the higher level of technical skill required, prior experience was found to be necessary, and a total of 62 men of different ethnic backgrounds were employed. As for the projects involving women, it was found that the Committee's quick impact projects would last only as long as an international organization could support them.

68. In order to address the longer-term economic and technical problems faced by the initial projects, the income-generating activities were redirected into small enterprise development projects in an effort to make them self-sustainable. With a longer time-frame, it became possible to train, advise and support the participants on a broader basis so that they would be able to manage the activities as private enterprises. 51/ The International Rescue Committee provided training on the production sites already established, while Relief International offered a five-day-long training programme on how to start up a business for women who had previously participated in the quick impact project programme. Once the projects, as defined by the participants, had been

approved, the women also were provided with up to US $200 in start-up capital in the form of wool, wheat, pregnant goats, or sheep. Because of the high number of persons to train, however, there was no capacity for this organization to provide management training, practical advice or other forms of support for activities once they had been established.

69. The transition from quick impact project to small enterprise development proved to be difficult in practice. Because of the urgency in establishing the initial projects, some issues of importance for their viability had not been sufficiently considered prior to the start-up. This weakness manifested itself during the transition period when management of the projects was handed over from UNHCR to UNDP by the end of 1995. UNDP discontinued some of the activities, judging that they could not become economically viable. An evaluation 52/ of the small enterprise development projects noted that the transfer to UNDP would have been easier if the projects had been conceived as long-term development programmes from the outset, as this would have allowed UNDP to provide complementary support. In the context of Tajikistan, however, this was rendered difficult because of UNDP's late establishment of operational capacity in the country.

70. In addition to income-generating activities, several economic surveys were carried out. 53/ These assessments were made in order to facilitate planning of future projects, by identifying obstacles and advantages in the current situation. In terms of capacity-building, Save the Children (United States) and Counterpart Consortium are training nationals in order that they will be able to assume the current tasks of training and advice once the international organizations depart. The non-governmental organizations are planning to establish a capacity-building resource centre.

71. A serious obstacle to the establishment of private enterprise is the lack of credit opportunities, which affects women in particular. Improved access to credit would enable the Tajiks themselves to define more easily the areas in which their business has the best possibility to succeed, taking into account their own perceptions of market opportunities and their own skills. The nature of the quick impact project and small enterprise development projects were designed and directed by UNHCR and its implementing partners without extensive consultation with the participants themselves. Save the Children (United States) has provided credit to small groups of women on the basis of group responsibility for the loans. This project has been successful, and almost all credit agreements thus far have been honoured.

72. The Representative was informed that the unstable provision of input products constitutes another major constraint. One way of addressing this problem has been to locate the production sites of the small enterprise development projects together so that products of one activity feed the other. This is a sound strategy but also increases the vulnerability of the overall activity when the input product is not available. For example, it was thought that oil-pressing, based on cotton seeds, could provide the soap production sites with necessary input material. When the Government decided that the sale of cotton seed would no longer be authorized, however, both activities were threatened.

73. It is important to establish an environment in which private business is possible. This entails clear legislation as a stable framework for longer-term investments and an efficient legal and administrative system to decide upon conflicting claims, enforce decisions, and register ownership and transactions. As a preparation for the takeover of enterprises by the participants, UNHCR and UNDP agreed to establish a mechanism for enterprise protection, to prevent the new owners from being subjected to abuses such as confiscation and overtaxation. The Government has taken a number of steps to support the development of private enterprises and is planning to privatize most of the smaller state enterprises. The Representative met with representatives of the World Bank and the International Monetary Fund (IMF), who provided information on how the Government has succeeded in bringing under control the rampant inflation which made it difficult to plan and make long-term investments. They reported that cooperation between the Government and international financial institutions has been strong.

B. Promotion and protection of human rights

74. A genuinely stable society is based on equity rather than on a repressive system. In this regard, the achievement of all human rights, for all inhabitants, is one of the best means for conflict prevention. The human rights record in a country is an important tool to assess overall stability in a society. International legitimacy depends to a large extent on the humanitarian and human rights record achieved, and often has an impact on the willingness of the donor community to support the national authorities. This section provides an overview of the current human rights situation, together with some recommendations.

75. Tajikistan has ratified the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as several ILO Conventions concerning forced labour, freedom of associations, the right to organize, employment policy and equal remuneration. 54/ The country has also acceded to the four Geneva Conventions and their two additional Protocols.

1. Life and personal security

76. As noted above, the Government took several steps to bring paramilitary groups under control in the aftermath of the civil war, and succeeded in reducing considerably the number of killings and harassment of civilians. However, ethnically motivated murders still take place, including persons of Kulyabi origin. It is uncertain the extent to which this is a feature of the armed conflict that is taking place in other parts of the country between regular armed forces.

77. At the time of the mission, serious concern was expressed to the Representative both by the returnees and by international organizations over the

treatment of prisoners, and in particular over life-threatening prison conditions. It was reported that young persons who had been sentenced to imprisonment for minor offenses, regularly were sent home dead as a result of lack of food and medicines. The right to life, the right to freedom from torture, inhuman and degrading treatment are non-derogable provisions of international law, and it is the duty of the state to ensure with all available means, including through international cooperation, that violations of these rights do not occur. ICRC for a long period had been denied access to the detention centres, and was thus without the possibility of assisting the prisoners. This has recently changed, in part as a result of international pressure, and ICRC has now been allowed to visit several detention centres. Further steps need to be taken to improve prison conditions, including through international monitoring of all detention centres, and to make sure that family members are informed of the whereabouts of those who have been detained.

78. With the intensification of the conflict in the Tavildara area, some 20,000 persons were internally displaced during and after the mission to the country. In August 1996, the Representative and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, were informed that some 300 of the internally displaced had been returned to the area by the Government, allegedly voluntarily, and that the Government was planning to continue such transports. In view of the ongoing hostilities, the large amount of land mines placed by both opposition and Government forces, and the fact that international organizations have been denied access to the areas, which prevented them from assessing their safety and providing essential food and medical assistance, serious concern was expressed for the lives and the personal security of the internally displaced persons concerned. Consequently, a joint urgent appeal by the Representative and the Special Rapporteur was sent to the Government, drawing its attention to the relevant provisions of international law and requesting information on the steps taken to prevent the occurrence of such incidents in the future. Similarly, while international organizations assisted the Government in establishing three reception centres for the internally displaced, provided with dormitories and food, they do not consider conditions safe enough to warrant return.

79. Security concerns seemed to be the main problem in two of the areas of return visited by the Representative. In a Pamiri community located in the capital the most acute problem expressed was the fear of conscription into the armed forces. Since the hostilities have resumed and intensified, Government forces reportedly recruit new combatants by conducting raids at night, searching buses and houses and arresting young men in the streets. They are then allegedly taken to the police station, beaten if they refuse to obey, 55/ and sent to combat zones without proper training. The practice has forced many young men to stay indoors for months, or to flee from the area, leaving the women behind with the difficult task of supporting their families. While it has been alleged that men of Pamiri and Garmi origins were particularly singled out for conscription in the last two years, it seems that the need for combatants today has led to indiscriminate recruitment in some areas. However, it has been reported that those recruited in the Leninabad Oblast receive proper training before being sent to the combat zones.

80. It is the sovereign right of any state to carry out recruitment, and there is normally today no requirement that this be voluntary on the part of the individual. However, conscription practices should be in accordance with the rule of law, including the fundamental principle of non-discrimination and equality before the law. Accordingly, if adequate training is provided to those from the north, then a similar practice should normally be followed for recruits from elsewhere. There should furthermore not be arbitrariness in the procedures with regard to singling out one group for drafting, and recruitment must be carried out in accordance with domestic law. Practices such as those reported to the Representative do not fulfil these requirements.

81. The Pamiri population in one village of returnees seemed to have little confidence in the local authorities for help with their security concerns. On the contrary, it was apparent that those who spoke out, were afraid to do so. Several stated that they were convinced that they were going to be punished afterwards for having told the Representative about their problems. He was told that they had been threatened in advance of his meeting with them by a local official of Kulyabi origin, who had said that they should not voice complaints or otherwise they would be arrested. When questioned about the returnees' fear, an official from the refugee department in the Ministry of Labour suggested that this fear was due to the lack of psycho-medical treatment after the return of the displaced, and that this had contributed to the present sense of alienation among the returnees towards the authorities. While the absence of such treatment may provide a partial explanation, other communities who had suffered the same experiences during the war did not make similar complaints to the Representative, thus indicating that the level of protection provided by local authorities varies considerably.

82. In the Gorno-Badakhshan Autonomous Oblast, security concerns were above all related to violence allegedly carried out by the Russian Border Forces. Several serious episodes were reported, including the shooting of civilians and civilian targets. While the presence of these troops provide state security, these episodes have led to a shift in perception among the local population. From a previously neutral attitude, they increasingly consider the presence of the Russian Border Forces as tantamount to occupation. The population has not felt that there is any channel available to report on these events, neither to the Government nor to the international community. When the Representative asked a displaced woman what message she wanted him to bring back to her leaders in the capital, she answered "We have no leaders over there", thus clearly reflecting the present feeling of alienation.

2. Freedom of movement

83. The Tajik legislation provides for freedom of movement. However, the current insecurity has led to numerous checkpoints along the roads, and as the security forces manning these roadblocks allegedly do not receive sufficient salaries, they are reportedly confiscating goods carried by the civilians, as well as harassing them. Given the negative repercussions on reconciliation and development of trade, it is important that measures are taken to prevent such practices. Measures could include an information campaign to the general public that the Government is committed to address this problem, and instructions to

the security forces that harassment of civilians and confiscation of their goods will not be tolerated.

3. Education

84. The situation in the education system reflects the wider problems faced by society. Some efforts have been made by the international community to repair damaged school buildings and heat them in the winter period, provide food for work as an incentive for teachers not to leave their posts, and distribute food to the children to encourage school attendance. In light of the population growth, together with the high number of vacant posts which has resulted from the emigration of the most qualified teachers, classes take place in two or three daily shifts. School attendance nevertheless is affected by the need for children to work and earn money and by the practice, in the Kurgan-Tyube region, of compelling teachers and children to provide forced labour in the fields during the cotton harvesting season. The quality of education also has been compromised by the lack of teaching material.

4. Freedom of expression

85. Although the Constitution protects freedom of expression, the Government severely restricts the possibility of voicing public criticism. A number of journalists have been murdered in the past years by unknown groups, generally without charges being raised 56/ and harassment and dismissals have led to a high level of self-censorship in the few newspapers that remain.

86. Freedom of expression is one of the cornerstones of democracy, and the lack of a well-functioning mass media constitutes a fundamental problem for the normalization of Tajik society. The lack of a possibility to express criticism restricts public access to reliable information, and according to a senior official, most of those who left do not believe in the changes that have taken place in Tajikistan because the information they receive is not accurate. Thus, the internally displaced who were contemplating return from Gorno-Badakhshan relied on rumours and news from relatives returning from the capital.

87. For decades, tensions in Tajik society under the Soviet regime were prevented from rising to the surface. This absence of a peaceful channel for criticism has contributed to the polarization of Tajik society. State-controlled mass media also opens up the possibility of manipulating the results of elections, a problem which has increased with the imposition of restrictions that prevent a genuine multi-party system from functioning. In order to strengthen civil society and facilitate the peaceful expression of news, there is a need for financial and technical support for the mass media.

5. Non-discrimination and equality before the law

88. The Tajik Constitution provides for protection against discrimination, and explicitly states that men and women have the same rights. In addition, the authorities have repeatedly stated their commitment to equality and

non-discrimination, and it was apparent in the discussions of the Representative with government officials at both the central and local level that they were making efforts to ensure that the law was being applied to persons of all ethnic groups in an equal manner.

89. However, the Representative noted discrepancies between the picture given by Government officials and the description of the problems as presented by many formerly displaced persons. With regard to work and housing for example, the law "on forced migrants" stipulates a right for the displaced to restitution of their property and to regain work equivalent to the previous one held. Penal law has also been enacted to enforce non-compliance on these issues. While the authorities have made efforts to ensure that cases of illegally occupied houses are solved, and many of the cases have been dealt with fairly and justly, there still remains a significant amount of unresolved cases where the local authorities have been unable to prevent de facto ethnic discrimination, owing to intimidation, limited capacity of the judiciary, pressure exercised on judges, and in some cases because decisions of eviction have not been enforced by the local police. As a result the formerly displaced are often hesitant to bring cases of discrimination to the authorities.

90. The Representative also received repeated complaints during his visits to Garmi and Pamiri communities in the capital and in the Kurgan-Tyube area, of persons having lost their employment to persons of a different ethnic origin. Internally displaced persons and minorities are in practice often overlapping categories in Tajikistan, and distinctions in problems facing them are blurred. Accordingly, the improved protection of minorities would increase protection for former and present internally displaced persons.

91. Massive unemployment certainly accounts for some of these problems, but in such difficult conditions, it is even more important to ensure that discrimination does not take place, and that justice is seen to apply equally to everyone. Formerly displaced persons are often particularly exposed, since their coping capacities have been reduced. The risk and consequences of losing employment are even more serious for women and women-headed households. They suffer from double discrimination, as a result of belonging to a minority and because of gender. They also have more problems to establish an alternative source of livelihood because of unavailable credit opportunities. More efforts are therefore urgently required to ensure that the law is being adequately implemented, so that it provides equal protection to the rights of all persons.

6. Rule of law

92. The current economic crisis has led to serious problems for the Tajik authorities to disseminate legislation and decrees throughout the country. During his visit to Gorno-Badakhshan, local government officials erroneously informed the Representative that internally displaced persons living in their region no longer qualified for the rights that had been granted them by the law "on forced migrants"; this law had a provision limiting the status of forced migrant to a period of three years. In fact, a presidential decree had almost a year earlier abolished the time limit, 57/ but this was unknown to the local officials. The local authorities were committed to assist the displaced, and

had distributed land in order for them to build a house or cultivate land. However, some of the remaining internally displaced persons informed the Representative that they received almost daily visits from local officials, telling them that they were no longer entitled to live in public buildings and threatening them with eviction.

93. This example illustrates the severe consequences of the present deficiency: unless the law is accessible to civil servants, the judiciary and the inhabitants, it is not possible to ensure an effective administration of the country, nor to have equality before the law. Central government officials expressed their deep concern to the Representative, and called for help from the international community to overcome the problem. With the financial difficulties, they had no means to publish the relevant texts, and the lack of paper and photocopiers made it difficult for them to distribute even a minimum amount of copies to the districts. The print media could not be utilized either, since the circulation figures of the few newspapers still functioning were too limited to satisfy even the demands of the capital.

94. Another problem which was reported to the Representative relates to the independence of the judiciary. While the Constitution states that judges are independent, and prohibits interference in their activities, the main criticism of OSCE of the draft constitution was the lack of independence for the judiciary. OSCE regards additional legislation on the judicial system, which was passed in March 1996, as an initial step in strengthening the independence of the judiciary, although the issue still needs attention. At present, the main problems lie in the lack of security of tenure for judges, the fact that their salaries are so low that they are vulnerable to corruption, and that they are easily influenced by paramilitary groups.

95. Thus, in spite of several important improvements in the quality of its domestic legislation over the past years, Tajikistan still faces problems with regard to meeting the requirements of international standards on the rule of law. The main problem lies in its implementation, pertaining to accessible legislation and independent tribunals which can solve cases within a reasonable time. As a result, many persons are still hesitant to utilize the justice system, and in view of the fact that a peaceful solution to the conflict has not yet been found, a strengthening of the rule of law is crucial for persons to feel safe. While some assistance has been provided by UNHCR and OSCE, there is still an urgent need to strengthen the judiciary, through financial support, capacity-building, training of court personnel and law enforcement officials.

96. A significant step to promote the protection of human rights was recently taken by the Government with the establishment of a national ombudsman. OSCE has been instrumental in supporting this initiative, and has agreed to provide financial assistance to his office. While internal scrutiny is important, the Representative urges the Government to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, together with its Optional Protocols. The image of Tajikistan would benefit from a positive attitude towards human rights, and the two treaties provide a solid framework for a thorough and regular review by legal experts, in dialogue with the authorities, on a range of human rights which are

fundamental for the strengthening of Tajik society and the well-being of its inhabitants.

V. THE QUEST FOR PEACE

A. Political negotiations and peacekeeping

97. Since displacement in Tajikistan resulted from the civil war, the search for peace is pivotal. In recognition of the magnitude of the humanitarian crisis and its potential impact on regional stability, the international community soon initiated efforts to stabilize the situation and assist in resolving the conflict. In November 1992, a United Nations good-offices mission was sent to the Russian Federation, Tajikistan, Uzbekistan, Kyrgyzstan and Kazakstan. The authorities in these countries agreed that humanitarian initiatives had to be reinforced by peacemaking and peacekeeping activities, 58/ since only a comprehensive approach could achieve the goals that had been set.

98. Within the framework of the Commonwealth of Independent States, the Governments of Kazakstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan decided in August 1993 to establish a coalition defence force in Tajikistan. They also declared that a political settlement remained the main priority and called on the international community for support in this regard. In addition, the Russian army, which had already during the war protected key installations from being damaged, 59/ deployed troops to guard the border with Afghanistan. 60/ The collective Commonwealth of Independent States peacekeeping force, together with the Russian Border Forces, gradually reached the strength of 25,000 soldiers. These forces have limited the capacity of the opposition forces to engage in large-scale military action on Tajik territory, and have therefore provided some degree of stability in the country. Nevertheless, the opposition has succeeded in making many attacks across the border from Afghanistan, and it is reportedly now in control of some parts of Tajikistan's territory.

99. On the political side, mediation carried out by the Secretary-General's Special Envoy for Tajikistan gradually led to high-level negotiations between the Government and the united opposition. These inter-Tajik talks, which were carried out under United Nations auspices, but with assistance from other interested Governments that participated as observers, eventually led to a ceasefire agreement, exchange of prisoners and other confidence-building measures, including the establishment of a joint commission to monitor adherence of the parties to the agreement. 61/ The process has been supported by the deployment of a United Nations Mission of Observers in Tajikistan, which assesses the military and security situation on the ground, monitors adherence to agreements by the parties, and facilitates communication.

100. In spite of foreign military presence and years of negotiations, peace still remains fragile. The ceasefire agreement has been frequently violated, with mutual accusations over the resumption of hostilities and for the lack of will to implement the agreements of the Inter-Tajik Talks. The impact of the mediation process therefore is difficult to assess. In his report on the situation in Tajikistan to the Security Council, the Secretary-General expressed

in June 1996 his concern at the serious deterioration of the situation, "which is at its worst and most volatile since the end of the civil war of 1992". 62/

101. The conflict seems unresolved because the losing side remains excluded from power and wealth. After the war, the two previous provinces of Kurgan-Tyube and Kulyab were merged into one, the Khatlon Oblast, so as to increase the control of the winning group over the other region. The four major opposition parties were banned by the Supreme Court on 24 June 1993, on the ground that they had violated their charters and engaged in unlawful actions. 63/ In exile, they joined into the United Tajik Opposition.

102. It appears that the opposing parties' perceptions of each other have hardened, thus closing the window of opportunity for compromise. The Government perceives the opposition as being dominated by Islamic fundamentalists, and the opposition considers the Government to be narrowly based and without a genuine will to share power. This has prompted the opposition to respond by targeted killings and murders carried out on an ethnic basis. Some of those who met with the Representative suggested that as the conflict has continued, the moderate parties have been pushed aside and replaced by hard-liners, so that preconceived perceptions are becoming reality. Implementation of agreements also has been complicated by the fact that neither of the parties have been able to establish unified chains of command; 64/ and with the rise in hostilities, military field commanders have gained increased political influence, leaving less room for the negotiators to compromise. As a result, the progress of the peace negotiations has been slow.

103. From the outset, the national confrontation appears zero-sum in the sense that the parties do not seem willing to negotiate in terms that are acceptable to the other; nor are they inclined to make compromises. All efforts seem to be concentrated around the issue of power-sharing, and the ongoing struggle leaves little room for discussion or sufficient consideration of policy directions for the country. Ironically, both the Government and the opposition have stated that they advocate a political solution to the conflict and a democratic and pluralistic society based on the rule of law. However, the parties seem fearful of each other's real motives, and suspicious that the stated objectives are not genuinely meant.

104. The Government, which has included freedom of religion in the Constitution, is frightened by the prospect of seeing the current State system overthrown by Islamic fundamentalists. Influenced by decades of Soviet rule, it wants to maintain a secular State, with equal participation of women in public life. In this connection, an observer informed the Representative that three young girls had recently been murdered in the Garm region for having cut their hair and danced in public. One senior government official, who professed to be a practising Muslim himself, told the Representative that he rejected the fundamentalist perspective as fanaticism and argued that the commitment of the opposition to a secular State was only a tactical consideration. The Government, then, associates the opposition threat with its fear of Islamic fundamentalism and insists that the Government's electoral law, Constitution and Parliamentary elections be respected.

105. The opposition, for its part, considers government fears of a religious takeover unfounded and argues that government discourse is hiding its unwillingness to share power. Furthermore, apart from one faction in one of the opposition parties which accepts operating within the framework of the current political system, the opposition rejects the legitimacy of the Government and Parliament, as well as the validity of the Constitution.

106. The referendum on the Constitution was held in November 1994, together with presidential elections, and parliamentary elections were held in February 1995. Several observers who spoke with the Representative considered the way in which the referendum and parliamentary elections were carried out to be a lost opportunity for the Government to reach out for reconciliation in the country. Given the importance of these events, it was considered crucial that the whole population be able to participate in the process, and that the opposition be able to influence the text of the Constitution and participate on equal terms in the elections. For this purpose, the Government was requested by intergovernmental organizations and other countries to postpone the elections, so as to allow time for adequate preparations.

107. While the Government agreed to a limited postponement of the elections, the time allowed was insufficient to permit the effective participation of the opposition. Furthermore, it has been reported that the Parliamentary elections were neither free nor fair and did not meet OSCE standards. Opposition candidates were still charged with crimes, and the main political opposition parties remained banned. Thus, the opposition was prevented from nominating candidates and participating on equal terms, and therefore boycotted the elections. 65/ Instead of confirming the state authorities' right to govern, the elections thus led to further division in society.

B. Conflict configuration at the regional level

108. There has also been discontent within the winning coalition. The war led to increased political influence for the Kulyab region in the south-east at the expense of the northern-based former elite. The Government is now commonly perceived as being dominated by Kulyabis, who also have tried to consolidate their power in other regions by substituting local officials with persons of Kulyabi origin. This led to serious protests and disturbances among the local population in the Leninabad Oblast in May 1996, and Kulyabi civil administrators and law enforcement officials had to be urgently evacuated from the region. Since this region has been much less affected by the civil war than the rest of the country, is industrialized and closer to foreign markets, it has been seeking economic and democratic development in a more active way than other regions.

109. Ethnic Uzbeks had expected recognition and reward for their participation in the conflict and made proposals to establish a separate province so as to increase their influence and self-government. These proposals have not been accepted, and as a result of the creation of the Khatlon Oblast, the Uzbek population has felt that it has become subject to even further domination by the Kulyabi group. Limited political influence has been a source of frustration and has led to two serious episodes previously in January 1996. Powerful ethnic

Uzbek warlords demonstrated their power, in one instance by taking members of the Tajik border guards hostage in the city of Turzunzade, and in another occupying the city of Kurgan-Tyube, before marching towards Dushanbe, and demanded changes in the composition of the Government as well as a decrease in corruption. By accepting some of the demands, the Government was able to find a peaceful solution to the insurrections.

110. The Autonomous Oblast of Gorno-Badakhshan presents a different picture than the seemingly zero-sum game at the national level. In June 1993 the local authorities informed the Government that they were no longer pursuing the goal of independence. They also agreed with the Government not to allow guerrilla activities in the province, and as a counterpart the Government agreed to keep its forces out of the region. These commitments have only been implemented to a limited extent. The local authorities are not in a position to prevent the opposition from entering the province, and in response some Government forces have been deployed in the region. However, while the armed struggle has intensified in other parts of the country, there are no open hostilities between the parties in Gorno-Badakhshan, and the situation has been characterized by international observers as a "phony war", conducted mainly through propaganda. Furthermore, the attitude in Gorno-Badakhshan between the local Government and the opposition seems far more conciliatory than at the national level; in their discussions with the Representative, both emphasised that "we are one people". A contributing factor to the truce is the cultural and religious identity of the Pamiris. The massive assistance provided by the Aga Khan Foundation to the whole population, regardless of its political or religious affiliation, has strengthened the sense of common identity and solidarity among the population. The role played by His Highness, Aga Khan, the Imam of the Ismaili Muslims, has been an important contribution to the relative peace and stability in this region.

C. Activities to foster reconciliation at the grass-roots level

111. Several steps have been taken by the Government in cooperation with international organizations to foster peace-building and reconciliation. UNHCR initiated an art and culture programme with a view to bring people of different ethnic backgrounds together around a common Tajik heritage. To this end, a 10-day festival was held in December 1995 in the capital and Kurgan-Tyube, with a variety of artistic performances, including music, dance, poetry, theatre and film. The peace and reconciliation programme was handed over to UNDP by the end of 1995, and this year a running-race was held in the capital. As was the case with the festival, thousands participated in the event. The Representative visited in the Kurgan-Tyube area one of nine youth clubs that UNDP, together with the local authorities, has established. The youth club had more than 85 children, who, in addition to learning a variety of skills, such as farming or photography, were assisting war veterans and families in need of assistance with housing construction and distribution of self-grown wheat and maize. An integrated part of the peace-building project is that both the children and the beneficiaries belong to different ethnic groups.

112. UNICEF has initiated in cooperation with the Ministry of Education a programme to address the problem of war-induced stress in children. The programme, which is implemented entirely by the Ministry, targets all primary schools in the country, involving more than 500,000 children. A booklet has been produced, and seminars have been held for the teachers, to enable them to integrate messages and activities regarding peace, tolerance of diversity and conflict resolution as well as the Convention on the Rights of the Child throughout the curricula.

VI. CONCLUSIONS

113. Displacement in Tajikistan resulted from the struggle for power between groups with conflicting views of the future of their country. The search for a common ground through cooperation and dialogue during the months surrounding Tajikistan's independence was soon replaced by confrontation, and the conflict intensified and degenerated into civil war. While the end result of this war seemed clear in military terms, the origins of the conflict still remained to be addressed. A major positive feature is that none of the parties today challenge the concept of Tajikistan as a unified state. Within the state, there has been room for the semi-autonomy of the Gorno-Badakhshan region, a status reflected in the Constitution. However, ongoing social tensions, a severely disrupted economy and continuing military clashes in some areas have raised concern that extended crisis could destroy the underpinnings of the State.

114. After the civil war the return of hundreds of thousands of internally displaced persons took place in a volatile environment. To promote reintegration the international community engaged in peacemaking and peacekeeping activities coupled with the provision of humanitarian assistance and efforts at protection. UNHCR, the lead agency in Tajikistan, engaged in a broader range of activities than is normally the case, in order to respond to the needs of returning internally displaced persons and promote social stability. The programme of return and reintegration included mediation, human rights monitoring, and protection and assistance for both refugees and internally displaced persons. Collaboration with the central Government and local authorities contributed to promoting confidence and building social stability - elements of primary importance for the accomplishment of the mission.

115. As the situation improved, UNHCR phased down its presence in the country. Responsibility for ongoing human rights monitoring and rehabilitation activities are now primarily in the hands of other agencies, in particular OSCE and UNDP. The dependency resulting from the provision of relief assistance, however, has not yet been effectively followed by viable development projects which could make the returns sustainable.

Institutional framework

116. While United Nations assistance was initially based on an inter-agency approach, developments led UNHCR to assume the lead role for activities in the country, and it served in this role until UNDP took over as Resident Coordinator. Considering the most appropriate institutional mechanism to assist

and protect the internally displaced, the experience in Tajikistan makes a strong case for the lead agency model in complex emergencies. It should be studied closely, with a view to its replication in other appropriate situations.

117. The presence of a lead agency, however, should not prevent other agencies from participating at the earliest stage possible, in support of the lead agency. In this case, the development-oriented projects initiated by UNHCR could have benefitted earlier from the expertise of UNDP. Incorporating beneficiary participation into quick impact projects and small enterprise development planning is one important aspect of development which UNDP's earlier involvement could promote. Whether such activities require that UNDP be present in the country or consulted at the conceptual stage should be closely examined.

Cooperation between the Government and the international community

118. International assistance, whether for humanitarian or development purposes, cannot be carried out successfully without support from the national Government. When the Government of Tajikistan considered the return of the displaced a national priority, it facilitated this task through a number of means within its capacity, and this commitment made it much easier for UNHCR to carry out its protection function. Similarly, the good cooperation reported with the Bretton Woods institutions reflects the high priority the Government is giving to the improvement of the economic situation. This has led to tangible results, such as the development of a strategy to curb inflation.

119. By contrast, with the increase in the number of humanitarian organizations operating in Tajikistan, coordination and cooperation between the humanitarian community and the Government has weakened. This has led to misunderstandings, suspicion and alienation on both sides with negative effects on the activities being carried out. While civil servants in organs working directly with the humanitarian community are familiar with the respective roles played by the organizations, senior government officials told the Representative that apart from a few major agencies, other organizations and their activities were unknown to them. Reciprocally, representatives of United Nations agencies and international non-governmental organizations complained about lack of access to governmental counterparts, without which it was difficult to ascertain whether the Government was supporting, or at least in agreement with, the projects being undertaken.

120. An example is instructive. Several income-generating activities were established by humanitarian and development organizations on the assumption that cotton seed was a locally available input. Although efforts had been made to inform the authorities about the projects, communication was unsuccessful and the projects had to be discontinued in the end, because the Government decided to use the seeds for a different purpose. If effective consultations could have been held between the Government and the relevant international agencies at the time the projects were initiated and during the different stages of the projects, this could have been avoided. In the absence of effective consultation, time was lost, resources wasted, and activities had to be cancelled.

121. Similarly, the introduction of a new tax system which taxes non-governmental organizations is not understood by some of the international non-governmental organizations which met with the Representative and argued that activities based on development assistance should not be subject to tax. It is evident that any State needs a sound economic foundation to finance its activities, and that when established enterprises carry out economic activities they should on an equal basis contribute to a Government's tax base. However, the controversy over the taxation of non-governmental organizations reflects a serious lack of communication between the Government and the humanitarian community.

122. In order for international assistance to be effective, coordination between the Government and the humanitarian community will need considerable improvement. It is important that an effective mechanism be established, so that international actors and the authorities can discuss issues of common concern on a regular basis, share information on current activities and take joint decisions, especially on how best to meet the needs of vulnerable groups. A number of sectors would benefit from increased cooperation and exchange of information, in particular on the Government's plans and priorities and the strategies being pursued by international humanitarian and development organizations. The mechanism should include the representatives of international agencies, non-governmental organizations and senior Government officials from key Ministries, such as the Ministries of Justice, Interior, Health, Labour and Foreign Affairs. It should assess the situation within different sectors, monitor progress in implementation of decisions and work to further refine its strategies.

Future prospects

123. The Government of Tajikistan, with the encouragement of the international community, has begun to address the formidable task of reconstruction after the civil war. In order to become a self-reliant and stable society the country will need continued support in the future as well. Tajikistan has reportedly a wealth of untapped natural resources and has inherited assets from the Soviet era, including roads and railways, a network of irrigation channels and a high degree of electrification. Maintenance, however, is sorely needed to prevent the collapse of these systems. Given the traditionally high value placed on education and literacy, Tajikistan has the potential to develop its human capital as well.

124. For stability to be achieved, it is necessary to develop the capacity for good governance as well. This requires a broadened and more representative political base within the legislative and executive branches of the State and a further strengthening of the human rights situation in the country. A political solution to the conflict will necessarily involve a broadening of the basis of the regime, and while this will be the natural outcome of successful negotiations, the Government could foster confidence-building, both at the political and grass-roots levels, by taking measures on its own in this direction.

125. Meanwhile, the conflict remains unresolved. It flared up very seriously during the summer of 1996. In the absence of a political solution the situation

in Tajikistan remains volatile, and the international community should do all it can to promote peace in the area. The ongoing conflict renders long-term planning difficult and inhibits foreign investment, since the current economic crisis exacerbates political and economic instability. The strengthening of Tajikistan's economy should continue to be an area of high priority. Strengthening the rule of law and promoting and protecting human rights will also be pivotal for the stability of the country. The Government regularly has affirmed its commitment to developing an effective judicial structure and to strengthening compliance with international human rights standards. The international community should impress upon it to fulfil these stated goals. The cooperation established by the Government with UNHCR, and thereafter with OSCE, is encouraging. The Government would also benefit from cooperating with other organizations. Among these, the United Nations High Commissioner for Human Rights and the Centre for Human Rights could provide assistance with human rights monitoring and, through its technical assistance and advisory services programme, with institution-building. Expanded monitoring is needed to address abuses along the border with Afghanistan, and in the areas of renewed fighting to which international agencies have had limited access thus far. Cooperation between the Government and the international community within all these fields would demonstrate a genuine and continued commitment on its part, which would in turn enhance the interest of potential donors in supporting the longer-term efforts of the Government.

Notes

1/ "UNHCR report on Tajikistan, January 1993-March 1996", UNHCR, May 1996, p. 4 (hereinafter referred to as the UNHCR report).

2/ According to a census conducted by the Union of Soviet Socialist Republics in 1989, the total population was estimated to be 5.1 million; estimates by the International Monetary Fund in May 1992 and November 1994 indicated a population of, respectively, 5.6 million and 5.7 million.

3/ "Return to Tajikistan, Continued Regional and Ethnic Tensions", Human Rights Watch/Helsinki (HRW/H), May 1995, vol. 7, No. 9, pp. 4 and 7 (hereinafter referred to as the HRW/H report, vol. 7, No. 9).

4/ UNHCR report, p. 15. Because of the volatile situation and lack of administrative capacities at the time, it is difficult to provide reliable data.

5/ "The CIS Conference on Refugees and Migrants", European Series, UNHCR, Regional Bureau for Europe, January 1996, vol. 2, No. 1, p. 18; "UNHCR's operational experience with internally displaced persons", September 1994, UNHCR, p. 54 (hereinafter referred to as the UNHCR's operational experience).

6/ Government estimations suggest that "over 679,000 returned out of 697,000 internally displaced persons" (Statement to the CIS Conference by the Deputy Prime Minister of the Republic of Tajikistan, Mr. K. Z. Gyasov, Geneva, 30 and 31 May 1996). According to UNHCR, an estimated 98 per cent of the internally displaced persons had returned home by the end of 1995 (UNHCR report, p. 25).

7/ The recent hostilities in Tavildara have led to the flight of approximately 16,500 internally displaced persons (S/1996/754, 13 September 1996, p. 8).

8/ An Oblast is an administrative region, corresponding to a province, and further subdivided into districts (rayons), collective farms, villages (kishlaks) and streets.

9/ "United Nations Development Programme (UNDP), Programme of the Government of the Republic of Tajikistan", programme document TAJ/95/002, March 1996, p. 6 (hereinafter referred to as UNDP-TAJ/95/002).

10/ Minorities include Ukrainians, Germans and smaller groups of Jews, Koreans, Tatars, Georgians, Armenians, Bachkirs and others (S/26311, 16 August 1993, p. 2).

11/ Owing to the deteriorating economic and political situation over the last few years, a significant proportion of this group has left the country. Of an estimated 450,000 inhabitants, only 80,000-90,000 are reportedly left in Tajikistan today, often without resources to emigrate, without support from family members, and living in urban areas, thus without the possibility to cultivate.

12/ The Leninabad region. The Ferghana Valley also extends into Uzbek and Kyrgyz territory.

13/ For example by making Tajik the official language, instead of Russian.

14/ For example, Rastokhez (Renaissance) and the Democratic Party of Tajikistan.

15/ For example, Lali Badakhshan (the Ruby of Badakshan).

16/ For example, the Islamic Renaissance Party.

17/ "Tajikistan, Political conditions in the post-Soviet era", Alert series, INS Resource Information Centre, United States Department of Justice, AL/TJK/93.001, September 1993, p. 6 (with further reference to Commission on Security and Cooperation in Europe, "Tajikistan", Implementation of the Helsinki Accords: Human Rights and Democratization in the Newly Independent States of the Former Soviet Union, Washington, D.C.: United States Government Printing Office, January 1993, p. 222).

18/ Tajikistan, however, did not gain its independence before the Soviet Union was formally dissolved at the end of December 1991.

19/ On 21 September 1991.

20/ Which was lifted on 1 October 1991.

21/ Davlat Khudonazarov, a Pamiri who was supported by the opposition.

22/ Aziz Niyazi quoted in Julien Thöni, "The Tajik Conflict: The Dialectic Between Internal Fragmentation and External Vulnerability, 1991-1994" (Geneva: Programme for Strategic and International Security Studies, 1994), p. 22.

23/ Safarali Kenjaev.

24/ Including the Democratic Party of Tajikistan, the Islamic Renaissance Party, Rastokhez and Lali Badakhshan.

25/ A serious episode also took place in a village south of the capital on 5 May, when the inhabitants refused to allow the passage of pro-government demonstrators on their way from Kulyab to Dushanbe. Armed bands from both demonstrations then arrived to the scene, resulting in 17 persons being killed.

26/ "Human Rights in Tajikistan, In the Wake of Civil War", HRW/H, December 1993, p. xvi (hereinafter referred to as HRW/H report).

27/ Ibid., pp. xx-xxiii; "Tajikistan: A Forgotten Civil War", the Minority Rights Group International, January 1995, pp. 16 and 17; and Olivier Roy, "Evolutions dans un environnement complexe", Ex-URSS: les Etats du divorce, p. 144 (hereinafter referred to as Olivier Roy, "Evolutions"), suggesting that in the face of nationalism expressed by the opposition, the communist party appeared as the best guarantee for stability and the protection of Russians and other ethnic minorities.

28/ HRW/H report, p. 55.

29/ UNHCR report, p. 15.

30/ Capital of the Leninabad Oblast.

31/ "Tadzhikistan, Hidden terror: Political Killings, 'disappearances' and torture since December 1992", Amnesty International, AI Index: EUR 60/04/93, May 1993, p. 3.

32/ Olivier Roy, "Evolutions", p. 141.

33/ UNHCR report, pp. 3 and 4.

34/ In December 1992 by the President, and in March 1993 by the Minister of Interior.

35/ With a period of repayment of 20 years and with no interest rate charged.

36/ UNHCR report, p. 21.

37/ In the initial phases, the wooden elements had been imported from Siberia, resulting in a delivery period of up to one year. Later imports from Europe reduced this to four months (UNHCR report, p. 29).

38/ In the third phase, Save the Children Fund (United States) was utilized as an implementing partner.

39/ Material for 6,700 houses has reportedly been delivered so far (HRW/H report, vol. 7, No. 9, p. 20; UNHCR report, p. 29).

40/ For 1,000 houses in the first phase.

41/ "Commonwealth of Independent States: Assistance to Displaced Persons, Other War Affected Populations and Vulnerable Groups; and Regional Logistics Activities", WFP, situation report No. 6, May 1996, p. 58 (hereinafter referred to as WFP report).

42/ Médecins Sans Frontières (Belgium) implemented the programme from its beginning in the spring of 1993, and the International Rescue Committee from July 1994.

43/ The two major export products, aluminium and cotton, have reduced outputs by more than half (UNDP-TAJ/95/002, p. 5).

44/ Estimates vary between 25 and 50 per cent (WFP report, pp. 56 and 57; UNDP-TAJ/95/002, p. 5).

45/ Corresponds to an average wage of US$ 3 per month.

46/ UNHCR report, pp. 52 and 53, with further reference to "Tajikistan: Survey of Household and Bazaar Economies" by Robert M. Birkenes, January 1996, Save the Children (United States) and UNHCR.

47/ Several persons complained during the mission that food or medicines that had been intended for them, had instead ended up with neighbours of different ethnic origin, or on the market place.

48/ UNHCR notes however, that agencies have concentrated on food distribution rather than the revival or regeneration of agriculture, and that donors and other United Nations agencies have been alerted to this need through inter-agency meetings (UNHCR report, p. 30).

49/ UNHCR report, p. 44.

50/ Ibid., pp. 43-45.

51/ Shelter Now International also provides training on private enterprise management in the Garm region, in roofing tile production sites.

52/ UNHCR report, p. 47; Carolyn S. Peduzzi, "Independent Evaluation of the UNHCR Small Enterprise Development Projects in Tajikistan", 14 December 1995, pp. 5 and 6.

53/ "Feasibility Study on Enterprise Development in the Republic of Tajikistan" by Ellen Pruyne, Small Business Advisor, UNHCR and Save the Children (United States), 18 August 1995; "Tajikistan: Survey of Household and Bazaar

Economies" by Robert M. Birkenes, January 1996, Save the Children (United States) and UNHCR; and "The Women's Economic Survey of Tajikistan" by Shahrbanou Tadjbakhsh, Ph.D, December 1995, UNHCR and Relief International (UNHCR report, pp. 49-56).

54/ ILO Convention 29 concerning forced labour, ILO Convention 87 concerning freedom of association and protection of the right to organize, ILO Convention 98 concerning the application of the principles to organize and bargain collectively, ILO Convention 122 concerning employment policy, and ILO Convention 100 concerning equal remuneration for men and women workers for work of equal value.

55/ Persons interviewed in Dushanbe alleged that a 29-year-old man of non-Kulyabi origin died in custody as a result of heavy beatings for his refusal to fight in Tavildara. Similar allegations were provided by other credible sources. Beatings and torture in custody were accounted in "Tajikistan Human Rights Practices, 1995", United States Department of State, March 1996, section 1(c) "Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment" (hereinafter referred to as United States Department of State human rights report).

56/ Central Asia and Transcaucasia Newsletter, Office for Democratic Institutions and Human Rights, OSCE, vol. 1, No. 2, p. 6; United States Department of State human rights report, section 2.

57/ The decree 542 was adopted on 22 August 1995.

58/ UNHCR's Operational Experience, p. 54.

59/ Such as a chemical plant and a dam, the destruction of which could lead to a disaster affecting neighbouring countries as well.

60/ While the Commonwealth of Independent States peacekeeping force initially included Tajik soldiers, they are no longer part of these troops. By contrast, some 80 per cent of the soldiers in the Russian Border Forces are Tajik.

61/ While the parties during the two first rounds in April and June 1994 were represented at a lower level, agreement on the ceasefire and exchange of prisoners was reached during high-level consultations in Tehran, Islamic Republic of Iran, from 12 to 17 September 1994. A "joint commission on problems relating to refugees and displaced persons from Tajikistan" was established in the first round of meetings, but never played an important role because the opposition members refused to come to Tajikistan. In February 1996, the work of the "Joint Commission for the implementation of the Agreement on a provisional cease-fire and the cessation of other hostilities on the Tajik-Afghan border and within the country" was halted as a result of the abduction of one of its members, and the refusal of the Government to ensure the safety of participants from the opposition. After such guarantees have been made, the Commission has recently resumed its work.

62/ S/1996/412, para. 28.

63/ Barnett R. Rubin, "Tajikistan: From Soviet Republic to Russian-Uzbek Protectorate", Central Asia and the World, p. 215.

64/ On the government side, the armed forces are falling within the Ministries of the Interior, Security and Defence, while the field commanders of the opposition seem to operate with a considerable autonomy.

65/ While there was a strong campaign during the presidential elections and referendum, and a high degree of participation, there was less interest in the parliamentary elections.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Internally displaced persons

Note by the Secretary-General

Addendum

Insert the attached map at the end of document A/51/483/Add.1.

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RST - Republican Subordinated Rayon comprises Gisar and Garm Oblast'